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Wisconsin Judicial Benchbook Volume IV: Juvenile

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JV 1: VENUE AND JURISDICTION

CHILDREN'S CODE

1. Legislative Purpose for Ch 48 (Children's Code)

A. Paramount goal of Code is to protect children and unborn children (UCs)

B. Provide procedures through which children and other parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety

C. Recognize that (unborn) children have basic needs that must be provided for, including the need for food, clothing, and shelter; to be free from physical, sexual, and emotional abuse; to be free from harm caused by EM's habitual lack of self-control in use of AOD exhibited to a severe degree; to develop to their full potential; for safe and permanent homes

D. Protect children from harmful effects resulting from absence of parents or parent substitutes, from inability of parents/parent substitutes (other than financial inability) to provide care and protection for children and from the destructive behavior of parents/parent substitutes in providing care for them

E. Ensure that children are provided good substitute parental care when necessary

F. Encourage innovative and effective prevention, intervention, and treatment approaches, including collaborative and community-based programming for (unborn) children, families, substitute families, and EMs

G. Divert (unborn) children from formal proceedings if consistent with their interests and public safety

H. Promote the adoption of children into safe and stable families, avoiding the impermanence of foster care

I. Allow for earliest possible termination of parental rights after reunification efforts fail and termination is in child's best interests

J. Reaffirm the duty of parent to support and maintain child during periods of substitute care

K. In cases of American Indian children, best interests of children must be determined consistent with provisions of Indian Child Welfare Act (ICWA), 25 USC 1901–1963

2. Definitions

A. Abuse—other than when referring to alcohol or drug abuse, means

B. Adult—person 18 years of age or older, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law, or civil law or ordinance, adult means person 17 or older

C. "ASFA"—Adoption and Safe Families Act (See JV 9)

D. Child—when used without further qualification, means person less than 18 years of age, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law, or civil law or ordinance, child does not include person 17 or older

E. CHIPS—child in need of protection or services

F. Court—when used without further qualification, means Ct assigned to exercise jurisdiction under Ch 48 and Ch 938

G. Emotional damage—harm to a child's psychological or intellectual functioning

H. Guardian—person named by Ct having duty and authority of guardianship

I. Incapacitated—unconsciousness or judgment so impaired that person is incapable of making rational decision as evidenced objectively by such indicators as extreme physical debilitation, physical harm, threats of harm to self, others, or property as result of use of or withdrawal from alcohol or another drug

J. Intoxicated—mental or physical functioning substantially impaired as result of use of alcohol or another drug

K. Judge—if used without further qualification, means the Judge of the Ct assigned to exercise jurisdiction under Ch 48 and Ch 938

L. Parent—includes biological parent, husband who consented to artificial insemination of wife, or parent by adoption

M. Relative—parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding genertion as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 48.02(15), even if marriage is terminated by death or divorce

N. Special treatment or care—professional services that need to be provided child or family or EM

O. UCHIPS—unborn child in need of protection or services

P. Unborn child—human being from time of fertilization to time of birth

Q. For other definitions, see § 48.02

3. Venue

A. Original actions

B. Venue for actions to appoint guardian under § 48.977

C. Venue for extended out-of-home care shall be in the Cty where the most recent order was issued

D. Venue for change of placement, revision, or extension for child or UC subject to dispositional order shall be in the Cty where the dispositional order was issued unless before the proceeding the Ct of that Cty determined that the proper venue for the proceeding lies in other Cty and transferred the case

E. It is reversible error to exercise jurisdiction over a child who is subject to the jurisdiction of a Juv Ct from another Cty even if second Ct has concurrent jurisdiction and proper venue

4. Exclusive Jurisdiction of Ch 48 Court

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6. Ch 48 Court Jurisdiction over Person 17 or Older

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9. Indian Child Welfare Act (ICWA)

A. See ICWA discussion in JV 17

10. Interstate Compact on the Placement of Children (ICPC)

A. Definitions

B. Conditions for placement

C. Sending agency retains jurisdiction over child as if child had remained in sending state until child

D. Sending agency has financial responsibility for support and maintenance of child during period of placement

E. Private charitable agency in receiving state may act as agent for private charitable agency of sending state

F. Juv delinquent may be placed in institution in another state pursuant to ICPC

G. ICPC does not apply to

JUVENILE JUSTICE CODE

1. Legislative Purpose for Ch 938 (Juvenile Justice Code)

A. Promote Juv justice system capable of dealing with problem of Juv delinquency

B. The following are "equally important" purposes of the Juv Justice Code

2. Definitions

A. Adult—person 18 years of age or older; except for purposes of investigating or prosecuting person alleged to have violated any State or federal law or civil law or ordinance, adult means person who has attained 17

B. Court—Ct assigned to exercise jurisdiction under Ch 938 and Ch 48, a Municipal Ct exercising jurisdiction under § 938.17 or, when used with reference to a Juv subject to § 938.183, a Ct of criminal jurisdiction

C. Delinquent—Juv who is 10 years or older who has violated any State or federal criminal law, EXCEPT

D. JIPS—Acronym for Juvs In need of Protection or Services, which includes Juvs who are runaways, uncontrollables, truants, "baby" delinquents (under 10), school dropouts, and NGI's or incompetents

E. Judge—Judge of Ct assigned to exercise jurisdiction under Ch 938 or Ch 48 or, if used with reference to a Juv subject to § 938.183, the Judge of a Ct of criminal jurisdiction, or a Municipal Ct Judge exercising jurisdiction under § 938.17

F. Juvenile—when used without further qualification, means a person less than 18 years of age, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law or a civil law or ordinance, Juv does not include a person who has attained the age of 17

G. Relative—parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding generation as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 938.02(15), even if marriage is terminated by death or divorce

H. Trial—fact-finding hearing to determine jurisdiction

I. Victim—person against whom delinquent act committed; parent, guardian, legal custodian if act against a child; representative designated by victim or family member when victim unable to physically or emotionally exercise rights; or if person deceased, family member or person who resided with deceased person; or guardian if act against incompetent person

J. For other relevant definitions, see § 938.02(1)–(21)

K. For ICWA definitions, see JV 17

3. Venue

A. Original actions

B. Venue for actions to modify dispositional orders

C. Venue for extended out-of-home care shall be in the Cty where the most recent order was issued

D. It is reversible error to exercise jurisdiction over a Juv subject to the jurisdiction of a Juv Ct from another Cty even if second Ct has concurrent jurisdiction and proper venue

4. Exclusive Juvenile Court Jurisdiction

A. Delinquent Juvs

B. Juvs in Need of Protection or Services (JIPS)

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D. Mental commitments under Ch 51 and protective placements under Ch 55

E. Proceedings under § 938.999 (Interstate Compact for Juveniles). See Sec. 10, infra

5. Concurrent Juvenile Court Jurisdiction

A. Ordinance violations—concurrent with Municipal Ct

B. Truancy violations—concurrent with Municipal Ct

6. Original Adult Court Jurisdiction That May Be Transferred Back (Reverse Waiver)

A. Notwithstanding §§ 938.12 and 938.18, Adult Ct has exclusive original jurisdiction over all the following

B. Juv under 15 years of age may be held in secure custody only in Juv detention facility or Juv portion of Cty jail

C. Criminal Ct may "reverse waive" Juv in paras. A1)–4) if Juv proves by preponderance of evidence all the following at a reverse-waiver hearing

D. See also Criminal Benchbook, Juvenile/Adult Matters

7. Original Adult Court Jurisdiction That May Not Be Transferred Back (No Reverse Waiver)

A. Criminal Cts have exclusive original jurisdiction over Juv alleged to have attempted or committed first-degree intentional homicide, § 940.01, or alleged to have committed first-degree reckless homicide, § 940.02, or second-degree intentional homicide, § 940.05

B. Juv subject to a criminal penalty under § 938.183(1m) may be placed in State prison when he/she turns 17, except DOC may not place any person under 18 in Boscobel maximum security institution

C. See also Criminal Benchbook, Juvenile/Adult Matters

8. Non-delinquent Original Adult Court Jurisdiction

A. Certain civil law and ordinance violations

B. Certain legal custody and guardianship proceedings

9. Juvenile Court Jurisdiction over Persons 17 and Older

A. Ct has jurisdiction over Juv 17 or older if action is commenced before Juv's 17th birthday

B. Jurisdiction over person 17 or older contributing to delinquency of Juv or to condition of JIPS

C. Jurisdiction over parent, guardian, or legal custodian of Juv adjudged delinquent or found JIPS for AOD use or abuse if Juv ordered to receive AOD treatment or education

D. Judge must refer allegations to DA including

10. Interstate Compact for Juveniles

A. Purpose is to do all of the following, through joint and cooperative action among the compacting states

B. Definitions

C. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purpose of the compact

D. Cts shall do all of the following to expedite interstate placements of Juvs

JV 2: INITIATION OF PROCEEDINGS

1. Initial Intake

A. Judicial duties

B. Intake duties

C. Intake inquiry

D. Intake interview

E. Intake determination to refer case to Ct

F. Intake worker may close case with notice to known victims

2. Right to Counsel, GAL, or Interpreter

A. In ICWA cases, see mandatory and discretionary appointment of counsel in JV 17, Sec. 2

B. At any time, upon request or own motion, Ct may appoint

C. Child/Juv has right to counsel IF

D. Adult expectant mother (AEM) right to counsel

E. Parents' and other parties' right to counsel

F. GAL duties

G. Right to Interpreter—see Wis. Judicial Benchbook, Vol. I, Criminal & Traffic, CR 2, Interpreters

3. Informal Disposition [CHIPS], [UCHIPS], Deferred Prosecution [JIPS/Delinquent]

A. Intake worker may enter informal disposition/deferred prosecution agreement, but it may not exceed 6 months for Ch 48 or 1 year for Ch 938 or include any form of out-of-home placement

B. Termination of informal dispositions/deferred prosecution agreement entered by intake worker without Ct order

4. Petition

A. Juv proceeding is commenced by filing of petition

B. Who may file petitions

C. For time periods for filing petition see JV 3

D. Required contents of petition

E. Amendment of petition

5. Notice, Summons

A. For ICWA cases, see JV 17

B. Delinquency proceedings, civil law or ordinance-violation proceedings, JIPS, CHIPS, or UCHIPS proceedings

C. Sec. 48.14/Sec. 938.14 proceedings

D. For notice/summons provisions regarding TPR, see JV 13

E. Ordinance citations issued if parent, guardian, legal custodian already notified of citation

F. Waiver of parental consent to abortion

G. Service of notice or summons

H. Failure to obey summons

6. Role of Circuit Court Commissioners (CCCs)

A. Cty Bd of Supervisors may establish one or more CCC positions to assist in matters affecting children/Juvs

B. Powers of Comm'rs

C. CCC may, if authorized by a Judge

D. CCC may NOT

E. Decisions of CCC reviewed by Juv Ct Judge upon request of any interested party. Any decision, order, or ruling by CCC may be certified to branch of Ct to which case has been assigned, upon motion of any party for hearing de novo

7. For Proceedings in TPR & Guardianships, see JV 13 and JV 16

8. For Appointment of GAL in Child Abuse and Harassment TROs and Injunctions, see Family Benchbook

JV 3: TIME CONSTRAINTS

CH. 48 TIME CONSTRAINTS FLOW CHART

CH. 938 TIME CONSTRAINTS FLOW CHART

1. Delays and Continuances

A. For general rules regarding computation of time see Ch 990

B. Children's and Juvenile Justice Codes contain provisions for delays and continuances of time periods, and Ct must comply with §§ 48.315, 48.028(4)(a), 938.315, and 938.028(4)(a)

C. Following time periods excluded in computing time periods in Children's and Juv Justice Code

D. No continuance or extension of time period may be granted, and no period of delay set forth in Sec. C. above may be excluded if to do so would result in any of the following

E. In waiver of parental consent proceedings under § 48.375(7), the delays set forth at paras. C.1), 4), 5), 7), 8), and 12) above DO NOT apply

F. Failure to act within any Ch 48 or Ch 938 time period does not deprive Ct of competency to proceed

G. If a party or the Ct does not act within applicable time period, Ct may (while assuring safety of child/Juv)

H. In Ch 48 and Ch 938, failure to object to delay or continuance waives challenge to Ct's competency to act

I. Statutory list of specific circumstances in Sec. C. above does not proscribe all other grounds for extending time deadlines

J. Continuance granted by Ct only upon showing of good cause in open Ct or during telephone conference, on the record

K. Statutory provisions for continuances apply to extensions under § 48.365 and § 938.365

2. Child/Juv/EM Held in Custody

   A. Custody hearing must be held

   B. Reasonable efforts required—if holding child/Juv in custody, Ct order must include the following:

   C. Reasonable efforts not required—within 30 days after Judge or CCC finds reasonable efforts NOT required, must hold hearing to determine permanency goal, and, if applicable, any concurrent permanency goals for child/Juv

   D. Placements certified as qualified residential treatment programs

   E. Requirements for filing petition for child/Juv in custody

3. Time Periods for Intake Decision and Filing Petition

   A. In CHIPS/UCHIPS case, within 60 days after receipt of referral, information intake worker shall request that a petition be filed, enter into an informal disposition, or close case. In JIPS/delinquency case, within 40 days after receipt of referral, intake worker shall request that a petition be filed, enter into deferred prosecution agreement, or close case

   B. Within 20 days after intake worker's request filed, prosecutor shall file petition, close case, with notice to victims, or refer back to intake (Ch 48) or intake/investigating law enforcement agency (Ch 938)

   C. If prosecutor declines to file and refers back to intake, intake worker has 20 days to close case or enter informal disposition/deferred prosecution

   D. If intake worker closes case or enters into informal disposition/deferred prosecution, must notify prosecutor

   E. If obligations under informal disposition or deferred prosecution agreement not being met, intake worker must notify prosecutor within 10 days after cancellation

   F. If time period missed, see § 48.315(3) or § 938.315(3)

4. Service of Notice or Summons

   A. Personal service made at least 72 hours before hearing, or

   B. Mail at least 7 days before hearing, except mail

   C. When petition is filed under §§ 48.13, 48.133, or 938.13(4), (6), (6m), or (7) and involves Indian child/Juv who has been removed from home of parent or Indian custodian, notice by mail must be received 10 days before hearing and, if person required to notice cannot be determined, notice to US Sec'y of Interior at least 15 days before hearing

   D. If at any point in the proceeding it becomes known that child/Juv is an Indian child/Juv, notice is required as specified in § 48.028(4)/§ 938.028(4), and next hearing may not be held before compliance with above notice

5. Substitution of Judge

   A. Not available for custody hearing

   B. Waiver to Adult Ct hearing

   C. Plea hearing

6. Demand for Jury Trial in Ch 48 Actions

   A. Available under Ch 48 only

   B. Must be made before the end of the plea hearing

   C. If nonpetitioning party, including child, makes request to consult with Atty on issue, Judge must grant continuance

7. Consent Decree

   A. Before entry of judgment in CHIPS, UCHIPS, JIPS, or delinquency

   B. Term

8. Permanency Plan

   A. If finding that reasonable efforts not required, Ct must hold hearing to determine permanency goal and, if applicable, any concurrent permanency goals within 30 days after finding

B. In other cases, agency must present permanency plan no later than 60 days after date that child/Juv was first removed from home, or, if agency is recommending out-of-home placement, at dispositional hearing, whichever is sooner

C. Permanency reviews and hearings

9. Plea Hearing

A. Must be held within 10 days after filing of petition for child/Juv in secure custody

B. Must be held within 30 days after filing of petition for child/Juv/EM who is NOT in secure custody

10. Fact-Finding Hearing

A. Within 20 days after plea hearing for child/Juv in secure custody

B. Within 30 days after plea hearing for child/Juv/EM NOT in secure custody

C. Subject to § 48.299(9) and § 938.299(10), when determination or reason to believe proceeding involves Indian child/Juv

11. Dispositional Hearing

A. Within 10 days after adjudication for child/Juv in secure custody, subject to § 48.299(9)/§ 938.299(10) if Indian child/Juv

B. Within 30 days from adjudication for child/Juv/EM NOT in secure custody

C. May hold dispositional hearing immediately after plea or fact-finding hearing (subject to § 48.299(9) and § 938.299(10) if Indian child/Juv) if

12. Termination and Extension of Orders

A. Order relating to unborn child in need of protection or services (UCHIPS) that is made before UC is born shall terminate at end of one year after its entry, unless Judge specifies shorter period of time or terminates order sooner

B. Order made before child/Juv attains 18 that places or continues placement of child/Juv in home shall terminate one year after date order was granted unless Ct specifies shorter period of time Ct terminates the order sooner

C. Order made before child/Juv attains 18 that places or continues placement of child/Juv in foster home, group home, RCCCY, in home of relative other than parent, or in a supervised independent living arrangement shall terminate at latest of the following dates unless Ct specifies a shorter period of time or terminates order sooner:

D. If disposition to Type 2 RCCCY or Juv correctional facility or secured RCCCY made before Juv attains 18, Ct may make order apply for up to 2 years or until Juv's 18th birthday, whichever is earlier, unless Ct specifies shorter period or terminates order sooner

E. Any request for extension must be filed before termination of order

F. See JV 8 and JV 11

13. Appeals

A. Appeals from Ch 48 and Ch 938 must be initiated within time periods of § 808.04 and are governed by procedures in §§ 809.30–809.32

B. Appeal by State of case under Ch 48 or Ch 938 shall be initiated within 45 days of entry of judgment of order appealed from

C. Appeal by a party other than the State or a motion for reconsideration of final judgment or order must be filed and served within 20 days after entry of the Ct's final order

D. TPR Appeal—see JV 13

JV 4: TEMPORARY CUSTODY (DETENTION) HEARING

1. Taking Child/Juvenile into Custody

A. ICWA applies to temporary and all other out-of-home placements. See JV 17, ICWA

B. Child/Juv may be taken into custody

C. Who may take a child/Juv into custody

D. Notification of parents

E. Release from custody

F. Child/Juv not released from custody

G. Special custodial circumstances

H. Criteria for holding Juv in a municipal lock-up facility

2. Taking AEMs into Custody

A. AEM may be taken into custody under any of the following

B. Adult friend or relative of AEM must be notified either by person taking custody of AEM or intake worker

C. Release of AEM from custody

D. AEM NOT released from custody

E. Criteria for holding AEM in physical custody

F. Places where AEM may be held in custody

3. Notice of Rights

A. If child/Juv/EM taken into custody and delivered to intake worker, worker must advise child/Juv/EM of

B. If child/Juv/EM held in custody by intake worker, worker must advise of right to present and cross-examine witnesses at detention hearing and advise of time and place of detention hearing required under § 48.21/§ 938.21 and possible consequences of that hearing

C. If custody hearing held, Ct must advise alleged delinquent; EM; parents, guardians, legal custodians, or Indian custodians of CHIPS; or JIPS of rights set forth at Sec. 5.G.5), infra

D. Before conferring with parent, AEM, or child/Juv during intake inquiry, intake worker must notify child/Juv, parents, and AEM as provided in § 48.243(1)/§ 938.243(1)

E. If child/Juv or AEM not present at custody hearing or intake conference, intake worker must make notification to child/Juv, parent, AEM, guardian, and legal custodian as in Sec. D. immediately above

4. Custody Intake Determination—Decision to Hold or Release

A. Custody intake decision may be made by

B. Release from custody by intake worker

C. Custody intake procedures

D. Criteria for holding child/Juv in physical custody

E. Places where a child/Juv may be held in nonsecure custody (for places where AEM may be held, see Sec. 2.F., supra; for places where child/Juv subject to ICWA may be held, see JV 17)

F. Additional criteria for holding child/Juv in Juv custody

G. Places where a child/Juv may be held in secure custody

H. Additional criteria required for holding child/Juv in Jail

I. Criteria for holding Juv in a municipal lock-up facility

5. Custody Hearing for Child/Juvenile

A. Purpose—to determine whether child/Juv will continue to be held in custody

B. Time periods

C. Notice of custody hearing

D. Custody hearing cannot be waived

E. Party may waive right to participate in custody hearing

F. Requirements for filing for child/Juv custody hearing

G. Procedures at custody hearing

6. Custody Determination and Order

A. In a delinquency case, if a petition, request to extend, revise, or change placement, or a statement of reasons for holding Juv in custody is filed, Ct may continue to hold Juv in physical custody. In CHIPS case, if petition or statement of reasons for holding child in custody is filed, the Judge or CCC may continue to hold child in physical custody

B. Order to hold child/Juv in custody must contain the above findings and be in writing

C. Ct may amend order if noncompliance with ordered conditions

D. Child/Juv may be held in Juv custody if criteria in Sec. 4.D., supra, are met and one or more criteria set forth at Sec. 4.F., supra, are met

E. Child/Juv may be held in Cty jail if criteria in Secs. 4.F. and 4.H., supra, are met

F. Rehearing of custody order

G. Review of custody order

H. Effective period of custody order

I. Predispositional change in placement

7. Custody Hearing for AEM

A. Purpose—to determine whether AEM shall continue to be held in custody under criteria of § 48.205(1m)

B. Hearing: When held, by whom

C. Petition

D. Waiver/notice of custody hearing

E. Determination of custody

F. Request for rehearing

G. Right to counsel of AEM

H. Form of custody order

I. Effective period of custody order—

J. Predispositional change of placement for AEM

K. Effective period of change-in-placement order—

JV 5: WAIVER TO ADULT COURT/REVERSE WAIVER

1. When Juvenile Court Jurisdiction May Be Waived in Favor of Adult Court

A. If alleged violation of State criminal law occurred on or after child's 15th birthday (except as to offenses over which Adult Ct has exclusive original jurisdiction—see Sec. C. below)

B. If one of following crimes is alleged to have occurred on or after Juv's 14th birthday

C. Cts of criminal jurisdiction have exclusive original jurisdiction over Juv

2. Procedure

A. Waiver petition may be initiated by

B. If Juv does not contest petition for waiver, no testimony need be taken and Ct shall base its decision on whether to waive jurisdiction under waiver criteria upon petition and other relevant evidence in record

C. Petitions

D. Notice

E. Hearing conducted by Judge not CCC

F. Hearing may be conducted by telephone or live audiovisual means

G. Use of restraints (shackling)

H. Substitution of Judge

I. Common law and statutory rules of evidence NOT binding at waiver hearing

J. General public must be excluded from waiver hearing unless Juv consents to a public hearing

K. Juv must by represented by counsel

L. Discovery

M. Burden on state to establish by clear and convincing evidence that it would be contrary to best interests of Juv or public to hear case in Juv Ct

N. Waiver hearing is not part of delinquency proceeding

3. Judge's Duties

A. Determine prosecutive merit

B. Apply waiver criteria

C. Decide whether State met burden to establish by clear and convincing evidence that it would be contrary to best interests of Juv or public to hear case in Juv Ct

D. Make findings and determinations

4. Jurisdiction Waived

A. If determination is to waive Juv Ct jurisdiction, Ct must enter order waiving jurisdiction and referring matter to DA for criminal proceedings

B. Juv Ct lacks jurisdiction to reconsider waiver order after State has filed charges against Juv in Adult Ct

C. Waiver is nonfinal order but Ct of Appeals encouraged to give careful consideration to granting leave to appeal

D. Once waiver has occurred, prosecutor may, in his or her discretion, charge other offenses not wholly unrelated to transactions or facts considered or testified to at waiver hearing

JV 6: PLEA HEARING AND PRETRIAL ISSUES

1. Time Periods

A. Plea hearing shall be held within 10 days after filing of petition for child/Juv in secure custody

B. Plea hearing shall be held within 30 days after filing of petition for child/Juv/EM NOT in secure custody

C. Plea hearing may be appropriate time for permanency hearing, which must be held within 30 days after finding no reasonable efforts required

D. Once case reassigned to new Judge, matter must be set for continued plea hearing within reasonable time

E. Ct shall only grant continuances upon showing of good cause in open Ct or during telephone conference on the record and only for so long as is necessary

2. Right to Counsel or GAL

A. See JV 2, Sec. 2

3. Procedure

A. May be held by Judge or CCC

B. Before accepting plea in delinquency and § 938.13(12) case, Ct must inquire of prosecutor whether

C. At (or at or before in Ch 938 proceedings) commencement of plea hearing, Judge or CCC must advise child/Juv and parent, guardian, legal custodian, or Indian custodian, UC's GAL, and AEM of following

D. Use of restraints (shackling)

E. Request for substitution of Judge

F. Demand for jury trial

G. Hearing must be recorded

H. If public hearing not held, general public excluded from plea hearing

I. In addition to provisions in Sec. H. above, the following may attend proceedings under Ch 938

J. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

K. Ct may order man to submit to testing, including genetic testing, and if the results show probability that man is father is 99.0% or higher, Ct may determine that man is father for proceedings under Ch 938 or Ch 48, except TPR

4. Form of Plea

A. CHIPS, UCHIPS, and non-delinquency JIPS [§ 938.13(4), (6), (6m), (7), or (14)] petition

B. Delinquency, civil law or ordinance, or JIPS under § 938.13(12) petition. Juv may plead as follows

C. If plea is not guilty by mental disease or defect, see Sec. 9, infra

5. Petition or Citation Not Contested

A. If petition not contested, Ct shall schedule dispositional hearing

B. If citation not contested, Ct may immediately enter dispositional order

C. Before accepting admission or plea of no contest, Ct must (except when Juv fails to appear or stipulates to citation)

D. If CCC accepts admission to delinquency, CHIPS, UCHIPS, or JIPS petition at plea hearing, Ct must, at dispositional hearing

6. Petition or Citation Contested

A. Ct shall schedule fact-finding hearing

7. Testing for HIV, Sexually Transmitted, and Communicable Diseases

A. At plea hearing or at any time thereafter, DA or Corp Counsel may seek Ct order for Juv to submit to

B. Juv must be alleged to have violated § 940.225, § 948.02, § 948.025, § 948.05, § 948.06, or § 948.085(2) in a § 938.12 or § 938.13(12) proceeding for HIV test; alleged to have violated § 946.43(2m) [assaults by prisoners] for communicable disease test

C. Request may be made at or after plea hearing, after Juv found delinquent or JIPS or NGI, or after Ct has determined Juv not competent to proceed and suspended proceedings

D. If Juv found not competent, Ct may only proceed if it first determines that the probable cause finding can be fairly made without the personal participation of the Juv

E. Ct shall hold hearing on request and may only order the test(s)

F. If probable cause found, Ct must order test(s) administered by health-care professionals

G. Results of tests shall be disclosed to following

H. Ct may order Cty to pay cost of tests ordered and may order reasonable contribution to cost from parent or guardian of Juv based on ability to pay

8. Physical, Psychological, Mental, Developmental, or AODA Examination

A. Examinations in general—Ct may order examination of child/Juv under its jurisdiction or parent, guardian, or legal custodian whose ability to care for child/Juv at issue

B. AODA—Ct may order AODA assessment of AEM/child/Juv under its jurisdiction, or parent, guardian, or legal custodian whose ability to care for child/Juv at issue

9. Competency and NGI

A. Mental disease/defect and competency examinations—Ct must order examination if probable cause that Juv committed delinquent act and not competent to proceed or plea of not responsible by reason of mental disease or defect entered

B. Hearings

C. Hearing Procedure—Mental Disease or Defect

D. Hearing procedure—Competency to proceed

10. Motions Before Trial

A. Any motion capable of determination without trial of general issue may be made before trial, except that

B. Taking child/Juv/AEM into custody considered an "arrest" for certain motions, including but not limited to

C. If child/Juv/AEM in custody and Ct grants motion to dismiss based on defect in petition or citation or in institution of proceedings

D. Motion required to be served on child/Juv may be served on Atty

E. Prosecutor may move to have audiovisually recorded deposition of child victim or witness

F. Oral argument on motions may be heard by telephone

11. Audiovisually Recorded Depositions or Statements of Child Victim or Witness

A. Definitions

B. Deposition may be ordered by Ct or on motion of any party, after hearing

C. Conduct of deposition to be recorded by audiovisual means

D. Admission of audiovisual recording of deposition

E. Admission of audiovisual recording of statement

F. Discoverability of audiovisually recorded statements

12. Discovery

A. Copies of all peace officers' reports must be made available upon request to Atty or GAL and CASA before plea hearing

B. All records relating to (unborn) child/Juv/AEM relevant to proceeding must be open to inspection to Atty or GAL for any party and CASA upon demand and presentation of releases, when necessary, at least 48 hours before hearing

C. Statutory discovery

D. Audiovisually recorded statements

13. Informal Disposition/Deferred Prosecution Agreements

A. See JV 2 Initiation of Proceedings, Sec. 3, this Benchbook

14. Consent Decree

A. Before entry of judgment in delinquency, JIPS, CHIPS, or UCHIPS, Ct or CCC may suspend proceedings and place child/Juv/AEM under supervision in child's/Juv's/AEM's home or present placement

B. Consent decree may be amended

C. Consent decree may be extended up to additional 6 months in absence of objection by parties

D. If child/Juv/AEM, parent, guardian, or legal custodian fails to fulfill express terms and conditions or child/Juv/AEM objects to continuation of consent decree

E. Juv who is discharged by Ct or completes supervision without reinstatement of original petition MAY NOT be proceeded against for same offense

F. If Ct elicits or examines information inadmissible at fact-finding hearing and party objects, Ct may not participate in further proceedings if

G. Delays resulting from imposition of consent decree are excluded in computing time requirements of Children's Code and Juv Justice Code

JV 7: FACT-FINDING HEARING IN CHIPS, JIPS, AND DELINQUENCY

1. Time Periods

A. For ICWA cases, see JV 17

B. If Ct or party fails to act within applicable time periods, Ct does not lose personal or subject-matter jurisdiction. Failure to object to delay or continuance waives challenge of Ct's competency to act

C. No more than 20 days after plea hearing for child/Juv in secure custody (unless § 48.299(9) or § 938.299(10) applies)

D. No more than 30 days after plea hearing for child/Juv/AEM NOT in secure custody (unless § 48.299(9) or § 938.299(10) applies)

E. Good cause finding must be made by the Ct on the record when delay or adjournment granted

F. At conclusion of fact-finding hearing, if child/Juv/UC found CHIPS, UCHIPS, delinquent, or JIPS, Ct may immediately proceed with dispositional hearing (subject to § 48.299(9)/§ 938.299(10)) if

2. Right to Counsel

A. See Sec. 2, Right to Counsel, in JV 2 and Sec. 2.C.1), in JV 17 (ICWA)

3. Procedure

A. Hearing must be recorded

B. Personal appearance

C. Burden of proof

D. Form of hearing—jury or Ct

E. Child must be present unless

F. If public hearing not demanded, general public excluded from fact-finding hearing

G. General public may always attend fact-finding hearing when Juv charged with

H. Use of restraints (shackling)

I. Rules of evidence apply

J. Special provisions for child witness

K. Trial Ct's duty to determine, on motion for JNOV, whether jury verdict is supported by evidence, is part of fact-finding hearing

4. Findings of Fact and Conclusions of Law

A. Allegations of delinquency or JIPS

B. Allegation of CHIPS/UCHIPS

5. Judge's Action at Close of Hearing

A. If allegations have not been proved, or (unborn) child/Juv not within jurisdiction of Ct, Ct must dismiss with prejudice

B. If allegations proved

C. If Juv found not responsible by mental defect or disorder, see JV 6

JV 8: DISPOSITION

1. Dispositional Hearing

A. Child/Juv must be adjudicated delinquent, JIPS, CHIPS, or UCHIPS before disposition entered

B. Before imposing disposition in delinquency under § 938.12 or JIPS under § 938.13(12), Ct must determine whether victim wishes to make statement

C. Dispositional hearing is mandatory

D. Time periods

E. Permanency hearing, permanency review, and permanency hearing time periods

2. Court Report

A. Required before disposition in all delinquency, JIPS, CHIPS, or UCHIPS cases

B. Ct designates agency to submit written report

C. Contents of Ct report (If dealing with Indian child/Juv, see JV 17, Sec. 7)

D. If foster care recommended but name of foster parent not available at time report filed

3. Dispositional Hearing Procedures

A. Hearing conducted by Judge not CCC

B. Hearing must be recorded

C. Common law and statutory rules of evidence not binding at dispositional hearing

D. Under Ch 48, child must be present unless

E. If public hearing not demanded, general public excluded from dispositional hearing

F. In addition to provisions in Sec. E. above, the following may attend proceedings under Ch 938

G. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

H. Victim's right to be heard in delinquency or JIPS disposition

I. Judge must explain conditions with which Juv required to comply and inform Juv of possible sanctions for violation

J. For right to counsel, see JV 2, Sec. 2

K. Use of restraints (shackling)

L. If dispositional order places child/Juv outside home, parent, if present at hearing, shall be requested to provide names and other identifying information of 3 relatives of child/Juv or other individuals 18 years of age or older whose home parent requests Ct to consider as placements for child/Juv, unless information previously provided under § 48.21(3)(f)/§ 938.21(2)(e) or (3)(f)

M. Ct shall order Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) to conduct a diligent search to locate and provide notice of information specified in § 48.21(5)(e)2.a.–e./§ 938.21(5)(e)2.a.–e. to all relatives of child/Juv named under § 48.335(6)/§ 938.335(6) and adult relatives as defined under § 48.21(5)(e)1./§ 938.21(5)(e)1. within 30 days after removal unless child/Juv is returned home within that period

4. CHIPS, UCHIPS, JIPS, and Delinquency Dispositional Orders

A. In addition to order, Ct must

B. Ch 48 standards for disposition

C. Ch 938 standards for disposition

D. Contents of order—must be in writing

E. Party, person, or agency providing disposition services is bound by Ct order

F. Ct may enter order applicable to parent, guardian, legal custodian, family member of AEM, or other adult as provided under § 48.45 and § 938.45. (See JV 1, Children's Code, Sec. 6)

G. If placement from Juv detention facility not immediately available, continued detention cannot exceed 5 days without Ct review

H. After hearing with due notice to parent or guardian, Ct may set reasonable rules of parental visitation if in best interest of child/Juv

5. CHIPS/UCHIPS Dispositions

A. Judge may counsel child, parent, guardian, or legal custodian

B. Judge may place child under supervision of DCF (if it approves), an agency, or suitable adult (including friend of child)

C. Judge may place child at home under supervision of DCF, Cty Dept, or child welfare agency and order agency or Dept to provide specific services to child and family including

D. Place child under Sec. 5.B. or 5.C. above and request CASA program to designate CASA for child

E. Designate one of following as placement

F. Judge may transfer legal custody if shown that rehabilitation or treatment and care cannot be accomplished by voluntary consent of parent or guardian

G. Judge may order parent, guardian, or legal custodian to provide special treatment and care (See JV 1, Children's Code, Sec. 2, for definition of special treatment and care)

H. If Ct report recommends coordinated services plan of care and Cty (or tribe) has initiative for coordinated services under § 46.56, Judge may order assessment of child's/family's eligibility and of initiative's appropriateness and, if child and family are eligible, Judge may order that plan be developed and implemented

I. Ct may order supervised independent living

J. Ct may order child to attend educational program

K. CHIPS with AOD treatment or education

L. Inpatient treatment for CEM

M. For CEM, if it appears unborn CHIPS may be born during period of dispositional order, Judge may order child, when born, to be provided with any services or care that may be ordered for CHIPS

N. Ct may NOT do the following in CHIPS cases

6. Additional Requirements If Out-of-Home CHIPS/UCHIPS Disposition

A. Written Ct order must include

7. Delinquency Dispositions

A. Judge must enter order deciding one or more dispositions in § 938.34 under a care and treatment plan

B. Ct shall consider seriousness of act for which Juv is adjudicated delinquent

C. Ct may consider any other delinquent act read into record and dismissed at time of adjudication

D. Counsel Juv, parent, guardian, or legal custodian

E. Place Juv under supervision of DOC (if DOC approves), an agency, Cty Dept, or suitable adult (including friend of Juv)

F. Place Juv at home under supervision of DOC or Cty agency and order agency to provide specific services to Juv and family including

G. Ct may order Juv to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in order

H. Volunteers in Probation (VIP) Program

I. Teen Court Program

J. Intensive supervision program

K. Place Juv in one of the following

L. Ct may not order any out-of-home placement with persons who have certain criminal histories

M. Monitoring by electronic monitoring system for Juv subject to an order under § 938.34(2), (2r), (3)(a)–(e), (4h), or (4n) who is placed in the community

N. Transfer legal custody if shown that rehabilitation or treatment and care cannot be accomplished by voluntary consent of parent or guardian

O. Place Juv in Type 2 RCCCY under supervision of Cty Dept and subject to Type 2 status only if

P. Place Juv in SJO program under § 938.538 if Juv qualifies for SJO treatment

Q. Correctional Placement. Place Juv in secured RCCCY

R. Aftercare Supervision. If Juv received correctional placement under § 938.34(4m), designate one of the following to provide aftercare supervision for Juv following Juv's release from secured RCCCY or Type 1 Juv correctional facility

S. Order reasonable restitution or repair

T. Order participation in supervised work program or other community service work

U. Community service work program

V. Victim-offender mediation program

W. Order parent, guardian, or legal custodian to provide special treatment and care (See JV 1, Children's Code, Sec. 2, for definition of special treatment and care)

X. Coordinated Services Plan of Care

Y. Order Juv to receive AOD treatment or education

Z. Drug testing

AA. Order Juv to attend educational program

BB. Experiential education

CC. Youth Report Center

DD. Juvenile offender education program

EE. Vocational training

FF. Day treatment program

GG. Impose forfeiture allowing up to 12 months to pay

HH. Delinquency Victim and Witness Assistance Surcharge

II. Transfer to foreign countries under treaty

JJ. Violent violation in school zone

KK. Graffiti violation

LL. Hate violation

MM. Violation involving motor vehicle

NN. Restrict Juv's use of computers if Juv committed specific computer crime

OO. Operating privilege suspended for certain firearm offenses and bomb scares

PP. Controlled substance or controlled substance analog violation

QQ. Must order one of following penalties if Juv possessed or attempted to possess a controlled substance or controlled substance analog

RR. Must order one of following penalties if Juv manufactured, distributed, or delivered, or possessed with intent to manufacture, distribute, or deliver a controlled substance or controlled substance analog, or if Juv possessed materials for manufacturing methamphetamine

SS. After ordering required disposition under Sec. QQ. or RR. above, Ct, with agreement of Juv, may enter order staying execution of dispositional order and enter additional order requiring Juv to do any of the following

TT. Possession of a controlled substance or controlled substance analog on or near certain premises

UU. Deoxyribonucleic Acid (DNA) Analysis

VV. Sex offender reporting requirement

8. AEM Dispositions

A. Ct may counsel AEM

B. Ct may place AEM under supervision of Cty Dept or DCF (if it approves) or suitable adult

C. Ct may place AEM in home of adult relative or friend or CBRF defined in § 50.01(1g)

D. Ct may order special treatment or care as identified under § 48.295

E. Ct may order AOD treatment or education

F. Ct may order inpatient AOD treatment, if Judge finds AEM in need of inpatient treatment for her habitual lack of self-control in use of alcohol, controlled substances or controlled substance analog, exhibited to a severe degree and that inpatient treatment appropriate and least restrictive treatment consistent with AEM's needs

G. Ct may provide for services for child when born

H. Ct may not do the following

9. JIPS Dispositions

A. Ct shall enter order deciding one or more of dispositions in § 938.34 (See Sec. 7 above) under a care and treatment plan

B. If Juv is Indian Juv, and Ct is ordering out-of-home placement, Ct must consider order of placement preference set forth in ICWA, § 938.028(6)(a)1.–4., unless good cause for departure

C. Ct may not do the following in JIPS cases

D. If Juv is found in need of protection or services on basis of violation or solicitation, conspiracy, or attempt to commit a violation under Chs 940, 944, or 948, or § 942.08 or § 942.09, or§§ 943.01–.15

10. Case Closure Orders

A. Juv Ct may modify Family Ct order and terminate Juv Ct order when:

JV 9: ASFA AND PERMANENCY PLANNING

ADOPTION AND SAFE FAMILIES ACT (ASFA) AS ADOPTED IN WISCONSIN

1. Introduction

A. In November 1997, the Adoption and Safe Families Act (P.L. 105-89) was signed into law. The Act places emphasis on physical safety of children in placement determinations and on timely achievement of permanent placement for children

2. Critical Judicial Findings Under ASFA as Adopted in Wisconsin

A. The first Ct order that sanctions, even temporarily, removal of child/Juv from home must include the following (this does not include a voluntary placement agreement):

B. Ct must make finding that, if permanency plan previously prepared for child/Juv, agency has made reasonable efforts to "achieve the permanency goal of the child's/Juv's permanency plan" (whether goal is return home, TPR/adoption, guardianship, relative placement, or, if child/Juv is 16 years of age or older, placement in some other planned permanent living arrangement), including through out-of-state placement. If such finding not made within 12 months after date child/Juv removed from home or within 6 months after last review/hearing, no federal foster care funding available until such finding made

C. Exclusions of time periods authorized pursuant to § 48.315(1) and § 938.315(1) are inapplicable to time periods for findings under ASFA

3. TPR Filing Requirements Under ASFA as Adopted in Wisconsin

A. If child is in a foster home, group home, nonsecured RCCCY, or shelter care facility 15 out of last 22 months, State must file or join petition for TPR, unless one of the statutorily recognized exceptions applies (child is placed with relative; absence of TPR grounds; agency has failed to provide the services deemed necessary for the safe return of child, if required; absence of active efforts to provide services needed to prevent breakup of Indian family; permanency plan indicates and documents TPR not in child's best interest)

B. If child in out-of-home care and Ct has found no reasonable efforts standard applies (child abandoned under age one or parent committed specified felonies), State must file or join involuntary TPR petition within 60 days after finding unless TPR exceptions apply

4. Permanency Planning

A. State law requirements

B. Permanency plan

5. Review of Plan

A. Plan must be reviewed

B. Ct must hold hearing to review permanency plan at 12-month intervals

C. Review panel to consist of at least three persons

D. Ct or agency to notify, in writing, not less than 30 days before review, with copy of notice filed in child's/Juv's case record:

E. Notification to include

F. Ct or panel to determine each of the following

G. After the permanency hearing, Ct must make written findings of fact and conclusions of law relating to determinations required by Sec. F. above

H. Agency to prepare written summary of panel determinations within 30 days after review with copy to

I. If written summary contains recommendations that conflict with dispositional order or provide for additional services not specified in dispositional order, primary agency must request revision of dispositional order

JV 10: TRAFFIC/CIVIL VIOLATIONS

1. Jurisdiction and Venue

A. Exclusive jurisdiction of Circuit Ct

B. Exclusive jurisdiction of Juv Ct

C. Concurrent jurisdiction of Juv and Municipal Ct

2. Procedure When Exclusive Jurisdiction in Circuit Court

A. Traffic, boating, snowmobile, ATV, utility terrain vehicle, and limited-use off-highway motorcycle violations

B. Sporting event safety violations

C. Absolute sobriety violation

3. Procedure for Ordinance Violations in Municipal or Juvenile Court

A. Hearing must be closed unless Juv, through counsel, demands public fact-finding hearing

B. If there IS a Municipal Ct and Juv is age 12 or older (Does not apply to truancy. See Sec. 8, infra)

C. If there is NOT a Municipal Ct and Juv is 12 or older (Does not apply to truancy. See Sec. 8 infra)

D. If Juv is under age 12, law enforcement

4. Juvenile Court Plea Hearing on Petition or Citation When Deposit or Stipulation and Deposit Not Submitted

A. See JV 6, Plea Hearing

B. Time periods

C. Right to counsel or GAL

D. Plea hearing may be held by Judge or CCC

E. Next hearing must be scheduled

5. Juvenile Court Fact-Finding Hearing on Contested Petition or Citation

A. See JV 7, Fact-Finding Hearing

B. Time periods

C. Purpose of hearing to determine whether allegations of civil law or ordinance citation proved by clear and convincing evidence

D. Right to counsel or GAL

E. Findings of fact and conclusions of law

F. Disposition at close of hearing

6. Juvenile Court Dispositions for Civil Law or Ordinance Violations

A. Does not include drinking, drug paraphernalia, truancy violations

B. Ct or CCC may impose one or more of the following dispositions

C. If Juv fails to pay restitution

D. If Juv fails to pay forfeiture

E. If Juv violates conditions under § 938.355(2)(b)7., Ct may impose any of sanctions under § 938.355(6)(d) (but Ct CANNOT impose a sanction on Juv who is subject to order that terminates when Juv attains 21 years of age)

F. Possible sanctions

G. Motion for imposition of sanction

H. Ct must hold hearing before imposing sanction

I. Hearing procedure

J. When Juv violates underage drinking and driving ("absolute sobriety") law or ordinance

7. Juvenile Court Dispositions for Violations of Drinking, Drug Paraphernalia Law

A. Possession or consumption of alcoholic beverage

B. Procuring or attempting to procure alcoholic beverage

C. False identification violations

D. Possession of drug paraphernalia—applies to persons under age 17

E. After ordering penalty under Secs. A., B., C., or D. above, Ct may enter additional order staying execution of order and suspending or modifying penalty imposed

F. If Juv alleged to have committed a drinking law violation is within 3 months of age 17

G. Suspension of operating privilege commences on date of disposition EXCEPT

H. If Juv or parent with custody fails to pay forfeiture ordered by Ct assigned under Chs 48 and 938 or a Criminal or Municipal Ct or if it appears likely Juv or parent will not pay forfeiture, the representative of public interest under § 938.09 or the law enforcement agency that issued citation may

8. Truancy and School Dropout Ordinances

A. Definitions

B. Jurisdiction

C. School attendance officer duties

D. Law enforcement officer duties if there is a Municipal Ct

E. Law enforcement duties if there is NOT a Municipal Ct

F. Disposition for truant

G. Disposition for habitual truant

H. If school attendance is a condition of truancy or habitual truancy order, order shall

I. Disposition for school dropout

J. See JV 11 for sanctions that may be imposed if person violates order

K. Parental Responsibility

JV 11: POSTDISPOSITION

1. Right to Counsel or GAL—Change of Placement, Trial Reunification, Revision of Disposition, Extensions, and Sanctions

A. Child/Juv has right to counsel

B. For parent's and other party's right to counsel, see JV 2

2. General Hearing Procedures—Change of Placement, Trial Reunification, Revision of Disposition, and Extension

A. Hearing conducted by Judge not CCC

B. Ch 48 hearing must be recorded

C. Ch 938 cases must be reported by a Ct reporter

D. Common law and statutory rules of evidence not binding. Ct must

E. Child must be present unless

F. If public hearing not demanded, general public excluded

G. In addition to provisions in Sec. F. above, the following may attend proceedings under Ch 938

H. Use of restraints (shackling)

I. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

J. If child in out-of-home placement, oral and written TPR warnings should be given at all change of placement, revisions of disposition, and extension hearings

K. Ct may not change placement to home of person convicted under § 940.01 or § 940.05 of homicide of parent of child/Juv if conviction has not been reversed, set aside, or vacated

L. Ct shall change placement to out of home if parent in whose home child/Juv placed is convicted under § 940.01 or § 940.05 of homicide of other parent and conviction has not been reversed, set aside, or vacated

3. Change in Existing Court-Ordered Out-of-Home Placement

A. If child/Juv an Indian child/Juv who has been removed from home of parent or Indian custodian and if proposed change in placement would change Indian child's/Juv's placement from outside that home, notice shall also contain statement as to whether new plcement is in compliance with order of placement preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b) and, if new placement is not in compliance with that order, specific information showing good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d)

B. Does not apply to Juvs in SJO program

C. Must be made according to statutory change-of-placement procedures

D. Change requested by primary dispositional person or agency or prosecutor

E. Emergency placement change by primary dispositional person or agency or prosecutor

F. Nonemergency placement change by primary dispositional person or agency or prosecutor, excluding orders terminating when child/Juv attains 21 years of age—See Sec. H., infra

G. Hearing when change by primary dispositional person or agency or prosecutor

H. Placement changes for orders terminating when child/Juv attains 21 years of age

I. Change requested by others: child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, EM, UC's GAL, or any person or agency primarily bound by dispositional order, or on Ct's own motion (If in-home to out-of-home, see Sec. 4, infra)

J. Proposed change of placement involving placing Juv in Juv correctional facility or secured RCCCY

K. If change of placement from out-of-home to in-home, expiration date must be reduced to no longer than one year after change-in-placement order is granted

L. Permanency plan must be revised to conform to order changing placement (See JV 9 for permanency planning)

4. Change from In-Home to Out-of-Home Placement

A. Treat as initial disposition for out-of-home placement

B. Must be made according to statutory change procedures

C. Change requested by primary dispositional person or agency or prosecutor

D. Change requested by others: child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, EM, or UC's GAL, or on Ct's own motion

E. Hearing required. These procedures do not apply to orders that terminate when child/Juv attains 21 years of age. For those orders, see procedure outlined in Sec. 3.H., supra, and see § 48.357(2m)(bv)/§ 938.357(2m)(bv)

F. Proposed change of placement of Juv to Juv correction facility or secured RCCCY

G. Findings and Order

H. NO change in placement may extend expiration of dispositional order, EXCEPT

I. Ct shall order parent to provide statement of income, assets, debts, and living expenses of child's/Juv's parent and child/Juv to Ct or agency primarily responsible for implementing dispositional order by date certain. If child/Juv placed outside home, Ct shall determine liability of parent under § 49.345(14) (in Ch 48 case) or § 301.12(14) (in Ch 938 case)

J. If Ct changes placement to placement outside home, parent, if present at hearing, shall be requested to provide names and other identifying information of 3 relatives of child/Juv or other individuals 18 years of age or older whose homes parents request t to consider as placements for child/Juv, unless information previously provided under §§ 48.357(2m)(bm), (1)(c)2m., 48.21(3)(f), 48.335(6)/§§ 938.357(2m)(bm), (1)(c)2m., 938.21(2)(e) or (3)(f), or 938.335(6)

K. Ct shall order Dept or agency to conduct a diligent search in order to locate and provide notice of information specified in § 48.21(5)(e)2.a.–e./§ 938.21(5)(e)2.a.–e. to all relatives of the child/Juv and to all relatives of the child/Juv named under § 48.357(1)(c)2m. or (2m)(bm)/§ 938.357(1)(c)2m. or (2m)(bm), and adult relatives as defined under § 48.21(5)(e)1./§ 938.21(5)(e)1. within 30 days after removal unless child/Juv is returned home within that period

5. Trial Reunification

A. Definition

B. No trial reunification may occur without a Ct order

C. Procedure

D. Hearing

E. Order

F. Extension of trial reunification

G. Revocation of trial reunification

H. Removal from foster home or other physical custodian

I. Prohibited trial reunification based on homicide of parent

6. Revision of Dispositional Order

A. Change in existing Ct-ordered out-of-home placement must be made according to statutory change-of-placement procedures (See Sec. 3 above)

B. If child/Juv was NOT placed out of home under existing Ct order, revision MAY NOT be used to place child/Juv out of home (Follow procedures in Sec. 4 above)

C. Revision MAY NOT extend effective period of original order or, under § 938.34(6)(am) impose more than a total of 30 days or under § 938.34(3)(f) impose more than a total of 365 days of detention, nonsecure custody, or inpatient treatment of Juv

D. Does not apply to Juvs in SJO program

E. Revision may be requested by

F. Request or Ct proposal must

G. Hearing required before revision

7. Extension of Orders

A. May no longer be required when placement in nonsecure out-of-home placement and original order provides that it shall terminate on latest of the following dates: the date on which child/Juv attains 18 years of age; the date that is one year after date on which order is granted; date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 19 years of age if child/Juv is a full-time student at secondary school or its vocational or technical equivalent and is reasonably expected to complete program before attaining 19 years of age; or date on which

child/Juv is granted high school or high school equivalency diploma or the date on which child/Juv attains 21 years of age, whichever occurs first, if child/Juv is a full-time student at a secondary school or its vocational or technical equivalent and if IEP is in effect

B. Exclusive method for extending dispositional orders

C. Extension may be requested by

D. Request submitted to Ct that entered order

E. Hearing required

F. Time periods

G. Written report required

H. Ct to determine which dispositions to extend

I. Ct must make written findings of fact and conclusions of law

J. If Ct extends order, new dispositional order must be issued

8. Termination of Orders/Case Closure Orders

A. UCHIPS order that is made before UC is born shall terminate one year after date on which order is granted unless Judge specifies shorter period of time or terminates order sooner

B. Order made before child attains 18 that places or continues placement of child in home shall terminate one year after date on which order is granted unless Judge specifies a shorter period of time or Judge terminates order sooner

C. Order made before Juv attains 18 that places or continues placement of Juv in home shall terminate one year after date on which order granted unless Ct specifies shorter period of time or Ct terminates order sooner

D. Order made before child/Juv attains 18 years of age that places or continues placement of child/Juv in foster home, group home, or RCCCY, or in home of relative other than parent, or in supervised independent living arrangement, shall terminate on the latest of the following dates, unless the Judge (Ch 48)/Ct (Ch 938) terminates the order sooner:

E. If disposition to Type 2 RCCCY, Juv correctional facility, or secured RCCCY, made before Juv attains 18 years of age, Ct may make order apply for up to 2 years or until Juv's 18th birthday whichever is earlier, unless Ct specifies shorter period or terminates order sooner

F. Case closure orders, see JV 8, Sec. 10

9. Extended Out-of-Home Care

A. Applies to a person who is a full-time student of a secondary school or its vocational or technical equivalent, for whom an IEP is in effect under § 115.787, and to whom any of the following applies:

B. Transition-to-Discharge/Voluntary Agreement/Extension

C. Transition-to-Discharge Hearing Procedure

D. Voluntary "Transition-to-Independent-Living" Agreement

10. Sanctions

A. Applies to JIPS (based on other than habitual truancy) or Juv adjudged delinquent or to have violated civil law or ordinance, (other than ordinance under § 118.163(1m) or (2)), who violates dispositional order

B. Possible sanctions

C. Motion for imposition of sanction

D. Ct must hold hearing before imposing sanction

E. Hearing procedure

F. If Juv violates a municipal ordinance enacted under § 118.163(2) (habitual truancy) or a condition of JIPS order based on habitual truancy, Ct may order as a sanction any combination of the following

G. If Juv violates a condition of dispositional order for violation of municipal ordinance enacted under § 118.163(1m) (truancy), Ct may order as a sanction any combination of the following

H. Motion for imposition of sanction under Sec. F. or Sec. G. above may be brought by person or agency primarily responsible for providing dispositional services to Juv, DA, Corp Counsel, or Ct that entered the dispositional order

11. Short-Term Detention for Violation of Order

A. Applies notwithstanding §§ 938.19– 938.21 but subject to any general written policies adopted by Ct under § 938.06(1) or (2) and to any policies adopted by Cty Bd relating to taking into custody and placement of Juv

B. Applies to delinquent or JIPS who violates condition of Ct order

C. Short-term detention while alleged violation and appropriateness of sanction being investigated

D. Short-term detention for violation of delinquency or JIPS order

E. Short-term detention for violation of condition of Cty aftercare supervision

F. Conditions must have been explained to Juv by Ct at dispositional hearing and Juv informed of possible placement or before violation, Juv acknowledged in writing that s/he read or had read to him/her and that s/he understood conditions and that possible placement

G. If Juv placed in Juv detention or place of non-secure custody, Ct shall order parents to con-tribute toward cost of placement the proportion of total amount that Ct finds parents able to pay

H. Use of placement in Juv detention facility or Juv portion of Cty jail under Secs. C., D., or E. above subject to adoption of Cty Bd resolution

12. Contempt for Continued Violation of Order Under § 938.355(6g)

A. Juv may be found in contempt and delinquency disposition imposed when all the following conditions are met

B. Procedures for contempt

C. If Ct finds Juv in contempt and orders disposition under § 938.34, Ct shall order parents to contribute toward cost of disposition the proportion of total amount that Ct finds parents able to pay

13. Contempt Proceedings Under Ch 785

A. Child/Juv, parent, AEM may be found in contempt for noncompliance with Ct order

B. If remedial sanction sought to terminate continuing contempt

C. If punitive sanction sought to punish past contempt

D. Holding child in contempt for failing to attend school under CHIPS disposition and ordering child to be held in secure detention but allowing opportunity to purge contempt by attending school regularly from detention is not remedial but amounts to a punitive sanction

E. Ch 785 finding of contempt is not basis for adjudication of delinquency

F. Under CHIPS order, Juv Ct cannot enforce participation in inpatient treatment program by a parent through contempt

14. Corrective Sanctions

A. Components

B. If violation occurs

15. Revocation of Community Supervision or Aftercare Supervision

A. No prior notice of revocation required

B. Juv on community supervision status may be taken into custody only as provided in §§ 938.19–938.21 or § 938.533(3)(a)

C. Juv on aftercare status may be taken into custody only as provided in §§ 938.19–938.21 and § 938.355(6d)(b)

D. DOC or whoever has been designated as aftercare provider under § 938.34(4n) may revoke through a hearing before DOA

E. Juv has right to counsel

F. Hearing conducted by division of hearings and appeals in DOA within 30 days after Juv taken into custody

G. Review of revocation decision by certiorari to sentencing Ct

H. Revocation may NOT extend expiration date of original dispositional order

16. Expungement

A. Juv adjudged delinquent under § 48.12, 1993 Stats., or § 938.12 may, on attaining 17, petition to expunge Ct's record of adjudication

B. Ct shall expunge Ct record of adjudication if it was Juv's first adjudication based on violation of § 942.08(2)(b), (c), or (d) (Peeping Tom offenses) or (3) ("upskirting"), and Ct determines Juv has satisfactorily complied with conditions of dispositional order

JV 12: RECORDS/VICTIMS' RIGHTS

1. Law Enforcement Records

A. Children's/Juv's records must be kept separate from records of adults

B. Children's/Juv's records, including records relating to expectant mothers (EM), must not be divulged except those in 1.D.–L., infra, and

C. GAL or Atty in delinquency proceeding may use criminal discovery devices except that Ct will establish timetable for certain required disclosures, including

D. Confidential exchange of information permitted between police and

E. If requested by victim, law enforcement may, subject to official agency policy, disclose to victim any information in its records relating to injury, loss, or damage suffered by victim

F. If requested by fire investigator, law enforcement agency, subject to official agency policy, may disclose information and records necessary for arson investigation

G. If requested by victim-witness coordinator, law enforcement shall disclose any information in records relating to "enforcement of rights under constitution, this chapter, and § 950.04 or the provision of services under § 950.06(1m)"

H. At request of administrator (or designee) of school district, private school, or tribal school, or on own initiative, law enforcement agency may disclose any information in records relating to the following (if official agency policy specifies that the information may not be provided to tribal school administrator or designee unless tribal school's governing body agrees that information will be used by the tribal school as provided in § 118.127)

I. If requested by parent, guardian, or legal custodian of child/Juv/CEM who is subject of report, or child/Juv/CEM, if he or she is 14 or over, or if requested by UC's GAL, law enforcement may provide copy of that report

J. Police (and Ch 48 and Ch 938 Ct) records shall be open for inspection for use in prosecution or evaluation of Ch 980 proceedings by DOC, DHS, DOJ, or DA

K. Any person denied access to police records (including parent, child/Juv/CEM, UC's GAL, legal custodian, or person with written permission of those individuals, victim-witness coordinator, school district administrator, victim, and victim's insurer) may petition Ct for release of police records

L. Police chief or sheriff may release sexual offender registration information relating to a child, Juv, or adult whose reporting requirement arises from a Ch 48 or 938 proceeding

M. Trial Ct may not order expungement of Juv police records

2. Court Records—Non-electronic

A. Juv and Municipal Ct records must be entered in books and kept in files for that purpose only

B. Files open to inspection or disclosed only by Juv Ct order EXCEPT

C. Juv adjudged delinquent may, on attaining age 17, petition Ct to expunge records

D. Confidentiality of traffic offenses

E. Disposition and evidence given in Juv Ct hearing not admissible as evidence against Juv in any other Ct except

F. Ct may disclose any information if in best interest of child/UC/Juv or administration of justice, except when specifically prohibited

G. When State seeks to use information obtained from "Juv file" and objection made to procedure used to obtain information, Trial Ct must determine from record if proper procedure followed by Juv Ct

3. Court Records—Electronic

A. Ct shall make information relating to a proceeding under Ch 938 and Ch 48 that is contained in electronic records of the Ct available to:

B. Limitations on Disclosure

4. Agency Records

A. Includes records or information regarding individuals in their care or custody received by

B. Information may only be disclosed by Ct order or as provided by statute

5. Confidentiality and Victims' Rights

A. Legislative intent and philosophy

B. Definition of Victim

C. Representation of Victim

D. Victims shall be entitled to the right of privacy

E. Confidentiality and victim access to hearings

F. Confidentiality and victim access to police records

G. Confidentiality and victim access to Ct records and proceedings

6. For Information on HIV and STD Testing, See JV 6

JV 13: TERMINATION OF PARENTAL RIGHTS

1. Definitions

A. Agency—DCF, Cty Dept, or licensed child welfare agency

B. Termination of parental rights (TPR)—pursuant to Ct order, all rights, powers, privileges, immunities, duties, and obligations existing between parent and child are permanently severed

C. "Parent" means a biological parent, a husband who has consented to the artificial insemination of his wife under § 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under § 767.803, "parent" includes a person acknowledged under § 767.805 or a substantially similar law of another state, a person conclusively determined from genetic tests to be the father under § 767.804, or a person adjudicated to be the biological father

2. Jurisdiction and Venue

A. Juv Ct has exclusive jurisdiction, except in Indian child custody proceedings

B. Venue

C. Venue if child placed out of home under CHIPS/UCHIPS order

D. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

E. Indian Child Welfare Act (ICWA)

3. Petition, Summons, Notice

A. Petition may be filed by

B. When petition must be filed or joined in by representative of public

C. Contents of petition

D. Following persons must be summoned

E. Contents of summons

F. Service of summons and petition

G. Failure to obey summons

4. Visitation or Contact Rights

A. Petitioner for involuntary TPR may simultaneously petition Ct for temporary order and injunction prohibiting respondent parent from visiting or contacting child

B. Ct may grant or deny temporary order ex parte

C. On or before date of initial hearing on TPR petition, Ct must hold hearing on whether to issue injunction

D. Notwithstanding any dispositional order, Ct may grant injunction prohibiting respondent from visiting or contacting child upon finding that prohibition is in child's best interest

E. Ct shall grant temporary order and injunction if parent has been convicted of 1st- or 2nd-degree intentional homicide of child's other parent and the conviction has not been reversed, set aside, or vacated unless

5. Hearing Procedures

A. Right to counsel

B. Hearings conducted by Judge not CCC

C. General public must be excluded from hearings

D. Use of restraints

6. Initial Hearing on Petition

A. Time periods

B. Purpose of hearing

C. If parent has been summoned and fails to appear, Ct may enter default judgment, but only after taking testimony on grounds

D. Ct should use initial hearing to rule on motions, discovery, and physical, psychological, mental, developmental, or AODA examinations

E. Adjudication of paternity for nonmarital child who is not adopted, parents not subsequently intermarried, and for whom paternity not established or for whom declaration of paternal interest has not been filed within statutory time period

F. Establish whether a proposed adoptive parent of child identified

G. If petition contested, Ct must set fact-finding hearing date within 45 days (except as provided in § 48.42(2g)(ag) in case of Indian child)

H. If petition not contested, Ct must

7. Four Methods of Consenting to Voluntary TPR (If an ICWA case, a fifth method is available, see JV 17 for discussion)

A. Parent appears personally and consents

B. Parent may appear before another Judge of any Ct of record, an embassy or consul official, or military Judge and sign written consent

C. Person who may be father of nonmarital child but is not adjudicated may consent as above (in A. or B.) or sign written notarized statement

D. If TPR proceeding held before adoption proceeding in which petitioner is child's stepparent or in which child's birth parent is resident of foreign jurisdiction, child's birth parent

E. When voluntary consent given as permitted in Secs. A.–D., supra, Judge may proceed immediately to disposition (See Sec. 10, infra)

8. Involuntary TPR

A. Proceedings to terminate parental rights against both parents may be brought in single action in interest of judicial economy and in absence of prejudice

B. TPR is bifurcated process

C. Pretrial procedures

D. Fact-finding hearing—Grounds phase

E. At fact-finding hearing, jury, or Judge if jury waived, must determine whether grounds exist for involuntary TPR. If case involves involuntary TPR to Indian child, Ct must determine whether allegations specified in § 48.42(1)(e) have been proved

F. Findings of fact and conclusions of law

G. Ct action at close of hearing

9. Court Report

A. Required when petition filed by agency or ordered by Ct

B. Contents of report

10. TPR Disposition

A. Time periods

B. Ct must hear relevant testimony from any party

C. Ct must consider statutory standard and factors in addition to any Ct report submitted by agency

D. Ct may dismiss petition if evidence does not warrant TPR

E. Available dispositions upon TPR of all living parents

F. Upon TPR disposition

G. Contents of TPR dispositional order

H. Effect of TPR

11. Post-TPR Proceedings

A. Relief from judgment

B. Judgments are final and appealable under § 808.03(1) (appeals as of right) and subject to a petition for rehearing or a motion for relief only as provided in § 48.46 and, in case of Indian child, in § 48.028(5)(c) and (6)

C. ICWA

D. Persons in military service

E. If permanent adoptive or subsidized guardianship placement not in progress 2 years after entry of order and DCF is guardian and custodian

12. Change in Placement, Post-TPR

A. Request for change in placement post-TPR may be made by:

B. Notice

C. Hearing/No Hearing

D. Contents of order

E. If emergency necessitates immediate change:

F. Prohibited placements

G. Effective period

H. Venue

13. Appointment of Guardian for Child

A. See JV 16

14. Notice Concerning Grounds to Terminate Parental Rights

A. See RMC Form

JV 14: ADOPTION

1. Availability of Adoption

   A. Any child present in Wis at time adoption petition is filed may be adopted if any of the following

   B. Who may adopt

   C. See Ch 882 for adoption of adults

2. Jurisdiction and Venue

   A. Upon filing of petition, Juv Ct of Cty where proposed adoptive parent or child resides or Cty where petition for TPR was filed or granted has exclusive jurisdiction over child (except as provided in § 48.028(3)(b) in Indian child custody proceeding)

   B. Indian Child Welfare Act (ICWA)

   C. Venue in Cty where proposed adoptive parent or child resides or Cty where petition for TPR was filed or granted at time of filing petition (except as provided in § 48.028(3)(b))

3. Guardianship for Children Without Living Parent

   A. Statutory procedure used for child without living parent if finding as to adoptability of child is sought

   B. See JV 16 for procedure

4. Adoptive Placements Not Requiring Court Order

   A. By agency

   B. By parent with relative

5. Independent Adoptions—Court Order Required

   A. If an Indian child, ICWA must be reviewed and complied with as required. See Sec. 7, infra

   B. Parent who has custody of child may place child for adoption in home of proposed adoptive parent(s)

   C. Both custodial parent and proposed adoptive parent(s) join in filing petition for adoptive placement

   D. Petition for adoptive placement must be verified and contain

   E. Petition for voluntary consent to TPR must be filed with petition for adoptive placement

   F. Ct's responsibilities when petition for adoptive placement filed

   G. Hearing procedure

   H. Hearing on petition for adoptive placement

   I. If TPR ordered and placement approved, Ct must

   J. If petition withdrawn or denied, Ct shall order case transferred to Ct assigned to exercise jurisdiction under Chs 48 and 938 for appropriate action

6. Adoption Petition

   A. When adoption petition may be filed

   B. Ct's responsibilities upon filing of adoption petition

   C. Investigation

   D. Recommendations required

7. Hearing on Adoption Petition

   A. Whenever Indian child, parent, or custodian involved in adoption proceedings

   B. Hearing may be in chambers unless interested person objects

   C. Petitioner and child age 14 or older must attend

D. Persons who do not have right under § 48.90(1) and (2) to petition for adoption do not have standing to object to the child's adoption by another

E. Ct must determine whether paternity conclusively determined from genetic test results under § 767.804, acknowledged, or adjudicated

F. TPR required before adoption

G. Findings required by Ct at adoption hearing

H. If adoption not granted or petition withdrawn

8. Adoption Petition Granted

A. Effect of adoption

B. Records

C. New birth record issued

D. Appeal of adoption order or judgment or withdrawal of consent

E. Adoption orders of other jurisdictions

9. Adoption of Children Who Are Not U.S. Citizens and Not Under Agency Guardianship

A. Bond required

B. Effect of filing bond

C. If bond condition violated

D. Evidence of availability for adoption required

E. Petition for adoption and/or TPR required

F. Ct's responsibilities if petition for adoption withdrawn, denied, or not filed

G. Any licensed child welfare agency that negotiates or arranges placement of foreign child for adoption shall provide services to child and proposed adoptive parents until adoption final

10. Adoption of Children Who Are U.S. Citizens and Not Under Agency Guardianship

A. ICPC does not apply

B. Applies to any person bringing child into Wis for purpose of placement in foster care or for adoption

C. Bond required

D. Effect of filing bond

E. If bond condition violated

11. Children Who Are U.S. Citizens and Under Agency Guardianship

A. ICPC applies

B. Definitions

C. Purpose and policy

D. Conditions for placement

E. Sending agency retains jurisdiction over child as if child had remained in sending state

F. Sending agency has financial responsibility for support and maintenance of child during period of placement

G. Private charitable agency in receiving state may act as agent for private charitable agency of sending state

H. ICPC does not apply to

JV 15: WAIVER OF PARENTAL CONSENT FOR ABORTION

1. Emancipated Minor

A. An emancipated minor may obtain an abortion just as any adult woman may

B. “Emancipated minor” is

2. Unemancipated Minor

A. Unemancipated minor may obtain abortion with written consent of minor and

B. Physician may perform abortion without consent or Ct order under limited conditions such as

C. Unemancipated minor may obtain abortion with Ct order waiving the requirement of written consent

3. Procedure for Waiver

A. Who may file petition

B. Petition shall contain

C. No filing fee may be charged

D. Minor who is subject to jurisdiction of Circuit Ct under § 48.16 and who is required to appear in Ct shall be represented by counsel

E. Identity of minor shall be kept confidential

F. Ct to set initial appearance on same calendar date petition is filed or, if impossible, on next calendar day

G. Notice of hearing to minor

H. Initial appearance

I. If minor appears with counsel at initial appearance, hearing on petition should be held immediately and need to return for second hearing dispensed with

4. Hearing on Petition

A. Confidential hearing held in chambers unless minor demands public fact-finding hearing

B. Statute requires “evidence”

C. Require attendance by minor if she filed petition, clergy if clergy filed petition, counsel and/or GAL for minor

D. Barred from attendance

E. Ct must hear evidence concerning

F. Ct may conduct interview with minor in chambers

5. Determination by Court

A. Decision must be issued within 24 hours after hearing and no later than 3 calendar days after initial appearance

B. Ct must grant petition if it finds either

C. No statutory burden of proof indicated

D. Ct must file findings of fact, conclusions of law, and final order with clerk within 24 hours after making the determination and order

E. If petition granted

F. If petition denied

G. Order is effective immediately

H. If Judge does not act within applicable time periods for making and filing decision, petitioner may select temporary reserve Judge who must then be assigned by Chief Judge

JV 16: JUVENILE GUARDIANSHIPS

1. Jurisdiction of Ch 48 Court

A. Ct exercising jurisdiction under Ch 48 has exclusive jurisdiction over appointment and removal of guardian of person in following cases, except as provided in § 48.028(3) (jurisdiction over Indian child custody proceeding)

B. For procedure in guardianships of estate of a minor, see Probate, Guardianship, & Mental Health Benchbook, GA 4

C. Guardianship proceedings are custody determinations governed by UCCJEA (See JV 1, Children's Code, Sec. 7)

2. Chapter 48 Guardianship of Person for a Child

A. Definition

B. Power to Appoint

C. Who may file

D. Initial timing considerations

E. Contents—petition shall state:

F. Nomination by Parent or Child

G. Notice

H. Appointment of GAL or counsel

I. Initial Hearing

J. Fact-Finding and Dispositional Hearing

K. Dispositional Factors

L. Disposition

M. Adjournment; proposed guardian unfit or not in best interests

N. Temporary Guardianships

O. Emergency Guardianships

P. Duties and Authority of Guardian

Q. Standby Guardianship

R. Successor Guardianship

S. Modification of Guardianship

T. Review of Guardian's Conduct

U. Termination of Guardianship

V. Visitation by Child's Grandparents and Stepparents

W. Prohibitions on Visitation

3. Guardianship for Child Without Living Parent—Adoptability Finding Sought

A. Following may file CHIPS petition for appointment as guardian for child without living parent

B. Notice required

C. Report required: report with information specified in § 48.425(1)(a) and (am) as ascertainable to be filed at least 5 days before hearing

D. Fact-finding hearing

E. Dispositional hearing

4. Appointment of Guardian for Child/Juv Found CHIPS or JIPS

A. Ct must find all of the following

B. If Ct appoints guardian under § 48.977(2), it may designate the child's placement as the child's permanent foster placement, only for purposes of § 48.368(2) and § 938.368(2)

C. Procedure

D. Duties and authority of guardian

E. Successor guardian

F. Revision of guardianship order

G. Termination of guardianship

H. Relationship to Other Guardianship Procedures

5. Judicial Appointment of Standby Guardian for Child

A. Definitions

B. Who may file petition

C. Contents of petition

D. Service and notice

E. Plea hearing

F. Fact-finding hearing

G. Dispositional hearing

H. Order

I. Commencement of guardianship

J. Suspension or rescission of standby guardianship

6. Parental Designation of Standby Guardian for Child

A. Parent (regardless of health status) may designate standby guardian

B. Designation must substantially conform to format in statutes

C. Designation must state when authority and duty of standby guardian to begin

D. Standby guardian shall file petition for judicial appointment as standby guardian of child within 180 days after date on which standby guardianship begins

E. Petition and notice are similar to those required in Sec. 5. Above

F. Procedures for hearing and determining petition are similar to those required in Sec. 5. Above

G. Requirements for revocation by parent and renunciation by guardian are similar to those for suspension and rescission in Sec. 5. Above

7. Delegation of Powers by Parent

A. A parent who has legal custody of a child, by a power of Atty that is properly executed by all parents who have legal custody of the child, may delegate to an agent, for a period not to exceed one year, any of the parent's powers regarding the care and custody of the child

JV 17: INDIAN CHILD WELFARE ACT (ICWA)

1. Introduction and Policy

A. Best Interest—In an Indian child/Juv custody proceeding, the best interests of the Indian child/Juv shall be determined in accord with federal ICWA, 25 USC 1901–1963

ICWA consistent with constitutional exercise of Congress's Article I authority

B. Policy—It is the policy of the state of Wis that Cts and child welfare agencies will

C. Under WICWA, any time in proceeding that Ct determines or has reason to know child/Juv is Indian child/Juv, Ct shall provide notice to child's/Juv's parent, Indian custodian, and tribe in manner specified in § 48.028(4)(a)/§ 938.028(4)(a):

D. Under ICWA, the Ct must ask each participant in the child custody hearing whether the participant knows or has reason to know that the child is an Indian child

E. Under WICWA, if Indian child/Juv is being removed from the home of a parent or Indian custodian and placed outside the home, Ct must designate one of the placements in § 48.028(7)(b) or § 938.028(6)(a), in order of preference listed, unless Ct finds good cause as stated in § 48.028(7)(e) or § 938.028(6)(d). See Sec. 7.B.3)c., infra

2. Jurisdiction, Transfers, Tribal and Parental Rights, and Interrelationship with State Law

A. ICWA Exclusive Jurisdiction—Indian tribe has exclusive jurisdiction over Indian child/Juv involved in child/Juv custody proceeding residing or domiciled within reservation

B. If parent, Indian custodian, or child's/Juv's tribe petitions, State Ct must transfer case to tribe unless

C. Indian child's/Juv's tribe or Indian custodian has right to

D. Interrelationship with state law

3. Application

A. ICWA does apply to

B. Notice and Petition Requirements

C. Special Proceedings Under ICWA

D. ICWA does NOT apply to

E. WICWA does NOT apply to

4. Failure to Follow ICWA

A. When any petitioner in Indian child/Juv custody proceeding before a State Ct has improperly removed child/Juv from custody of parent or Indian custodian or has improperly retained custody

5. Definitions/Terms Unique to ICWA

A. Active efforts (ICWA): Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family

B. Active efforts (WICWA): An ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's/Juv's tribe and that utilizes the available resources of the Indian child's/Juv's tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child/Juv, other individual Indian caregivers, and other culturally appropriate service providers

C. Adoptive placement—Permanent placement of Indian child

D. Extended family members—Member of child's/Juv's extended family as defined by tribal law or custom. In absence of custom or law, a person who is 18 years or older and is child's/Juv's grandparent, aunt, uncle, brother, sister, brother/sister-in-law, niece, nephew, first or second cousin, or stepparent

E. Former Indian custodian—Indian custodian of an Indian child before termination of parental rights and adoption of the child

F. Former parent—Parent of Indian child before termination of parental rights and adoption of the child

G. Indian—Any person who is a member of an Indian tribe or an Alaska native and member of regional corporation under 43 USC 1606

H. Indian child/Juv—Unmarried person under the age of 18 who is a member of an Indian tribe or eligible for enrollment and the biological child/Juv of a member of a tribe

I. Indian child custody proceeding—Proceeding governed by ICWA that may result in an adoptive, preadoptive, or out-of-home care placement of an Indian child, a TPR to an Indian child, or a delegation of parental powers regarding an Indian child

J. Indian child's/Juv's tribe—Tribe in which Indian child/Juv is member or eligible for membership

K. Indian custodian—Indian person who has legal custody of Indian child under state law or tribal law or custom, or to whom parent of child had transferred temporary physical care, custody, and control

L. Indian Juv custody proceeding—Proceeding under § 938.13(4), (6), (6m), or (7) that is governed by federal ICWA and in which an out-of-home care placement may occur

M. Indian tribe—Tribe, band, nation, or organized group or community of Indians eligible for services to Indians provided by Sec'y of Interior because of Indian status, including Alaska native village as defined in 43 USC 1602(c)

N. Out-of-home care placement—Removal of Indian child/Juv from the home of his parent or Indian custodian for temporary placement in foster care, group home, RCCCY, or home of relative or guardian, when Indian parent or custodian

cannot have the child/Juv returned on demand

O. Parent (ICWA) means any biological parent of parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established

P. Parent (WICWA)—Includes biological parent, husband who consented to artificial insemination of wife, parent by adoption

Q. Preadoptive placement—Temporary placement of Indian child in out-of-home care placement, other than shelter care facility, after termination of parental rights but before or in lieu of adoptive placement

R. Qualified expert witness (ICWA): A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and "should" be qualified to testify as to the prevailing social and cultural standards of the tribe

S. Qualified expert witness (WICWA) (in order of preference)

T. Relative—Parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding generation as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 48.02(15)/§ 938.02(15), even if marriage is terminated by death or divorce

U. Social and cultural standards—The standards to be applied in meeting the placement preference requirements shall be the prevailing social and cultural standards of the Indian community in which the Indian child's/Juv's parents or extended family members reside or with which the Indian child's/Juv's parents or extended family members maintain social and cultural ties

V. Tribal court—Ct having jurisdiction over Indian child/Juv custody proceedings and is either Ct of Indian offenses or Ct established and operating under code or custom of an Indian tribe or any other administrative body of an Indian tribe vested with authority over Indian child/Juv custody proceedings

W. Tribal or personal preferences—In placing Indian child/Juv under § 48.028(7)(a), (b), or (bm)/§ 938.028(6)(a) or (am), or in delegating parental powers under § 48.028(7)(a), if Indian child's/Juv tribe has established, by resolution, an order of preference that is different from order specified in § 48.028(7)(a) or (b)/§ 938.028(6)(a), the order of preference established by that tribe shall be followed, in absence of good cause, as described in § 48.028(7)(e)/§ 93.028(6)(d), to the contrary, so long as placement or delegation under § 48.028(7)(a) is appropriate for Indian child's special needs, if any, and placement under § 48.028(7)(b) or (bm)/Ch 938 is least restrictive setting appropriate for Indian child's/Juv's needs as specified in § 48.028(7)(b)/§ 938.028(6)(a)

6. Notice and Continuances

A. If at any time in proceeding under Ch 48 or § 938.13(4), (6), (6m), or (7), Ct determines or has reason to know child/Juv is Indian child/Juv, Ct shall provide notice to child's/Juv's parent, Indian custodian, and tribe in manner specified in § 48.028(4)(a)/§ 938.028(4)(a)

B. Good cause for continuances includes a maximum of 20 days in a proceeding involving out-of-home care placement of child/Juv or TPR of a child the Ct knows or has reason to believe is an Indian child/Juv, resulting from a continuance granted at the request of the child's/Juv's parent, Indian custodian, or tribe to enable the requester to prepare for the proceeding. The § 48.315(1)(j) continuance provision does not apply in § 48.375(7) proceeding

7. Out-of-Home Care Placements, Emergency Removals, Temporary Changes in Placement, CHIPS/JIPS/UCHIPS Dispositional Placements, Voluntary TPR, and Records

A. Emergency removals under §§ 48.19–.21/§§ 938.19–.21 and emergency changes in placement under § 48.357(2)(b)/ § 938.357(2)(b) are not "out-of-home care placements" under WICWA

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VOLUME IV
Juvenile

Seventh Edition

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2024

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IN MEMORIAM

RONNI G. JONES

April 12, 1941—November 7, 2002

The Wisconsin Judicial Benchbooks have borne the imprint of their Project Editor, Ronni Jones, since 1988 when Ronni first assumed this task for the Office of Judicial Education. In that time, the judges and lawyers of this state have benefited from her focused dedication to the creation and maintenance of a useful, practical resource for Wisconsin's trial judges. And those of us who had the good fortune to know and to work with Ronni have benefited from the friendship and collegiality of this vibrant, witty, and generous woman.

Ronni brought to her work a fierce intelligence and a logical and discerning approach to solving problems. Along with it came a marvelous sense of humor and a dry wit served up with a trace of a Brooklyn accent. Ronni was the genuine article. It was fun to see her discuss a case or a legal issue with a group. She was energized by the intellectual discussion, but always with a purpose; she unfailingly kept her eye on the practical goal of how the end product could be used to assist judges.

Ronni's commitment to judicial education is perhaps not surprising. When she entered law school at the age of 42, she had already combined raising a family with a history of work in training and education, and a track record of commitment to volunteerism and public service. She was married for 40 years to P. Charles Jones, a bright and thoughtful Dane County judge who was himself a longtime member of the Civil Benchbook Committee. And she loved a challenge.

Warmth and humor infused Ronni's relationships with the people she knew and worked with. She was gracious and unpretentious, encouraging and delighting in conversation whether around the conference table or the dinner table. She was a facilitator in the best sense of the word; she wanted to include everyone in the discussion or in the gathering or in the party.

Ronni loved her work but more so the abiding friendships developed in the course of her work. We remember her with gratitude as a judicial educator who helped to make us better judges. And we remember her with fondness as a friend who, along the way, helped to make us better people.

The Wisconsin Judicial Benchbook Editorial Committees
April 15, 2003

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Citation Abbreviations

A2d	Atlantic Reporter, 2nd series
ABA Stds	American Bar Association Standards
ALR	American Law Reports
ALR2d	American Law Reports, 2nd series
ALR3d	American Law Reports, 3rd series
ALR4th	American Law Reports, 4th series
Am Jur	American Jurisprudence
Am Jur 2d	American Jurisprudence, 2nd series
CA	Court of Appeals
CJ	Corpus Juris
CJS	Corpus Juris Secundum
Const	Constitution
Cr L	Criminal Law Reporter
F	Federal Reporter
F2d	Federal Reporter, 2nd series
FRCP	Federal Rules of Civil Procedure
FRCrP	Federal Rules of Criminal Procedure
FS	Federal Supplement
IRC	Internal Revenue Code
LEd2d	Lawyers Edition, 2nd series
OAG	Attorney General Opinion
P2d	Pacific Reporter, 2nd series
Pin	Pinney's Wisconsin Reports
RMC	Records Management Committee
SCR	Wisconsin Supreme Court Rules
SCt	U.S. Supreme Court Reporter
St	State
SW2d	South Western Reporter, 2nd series
USC	United States Code
USCA	United States Code Annotated
Wis.	Wisconsin Reports, 1st series
Wis. 2d	Wisconsin Reports, 2nd series
Wis Adm Code	Wisconsin Administrative Code
Wis JI-Cr	Wisconsin Jury Instructions, Criminal
Wis JI-Cv	Wisconsin Jury Instructions, Civil
Wis JI-Cr, SM	Wisconsin Jury Instructions, Criminal, Special Materials

Note: At times, the user will encounter citations that include abbreviations other than those listed above. The Benchbook format restricts printing the full, unabbreviated names. We regret any inconvenience this may cause, but we are confident that in most instances, the abbreviations are

self-evident.

Text Abbreviations

AG	Attorney General
AOD	Alcohol and Other Drugs
AODA	Alcohol and Other Drugs Abuse
Asst	Assistant
Atty	Attorney
AV	Audiovisual
Bd	Board
CCC	Circuit Court Commissioner
Ch	Chapter
CHIPS	Child in Need of Protection or Services
CMV	Commercial Motor Vehicle
Co	Company
Comm'r	Commissioner
Corp	Corporation
Ct	Court
Cty	County
DA	District Attorney
DCF	Department of Children and Families (formerly DHFS)
Def	Defendant
Dept	Department
DHS	Department of Health Services
DL	Driver's License
DOA	Department of Administration
DOC	Department of Corrections
DOT	Department of Transportation
DWD	Department of Workforce Development (formerly DILHR)
FCC	Family Court Commissioner
GAL	Guardian ad Litem
Gdnshp	Guardianship
ICJ	Interstate Compact on Juveniles
ICPC	Interstate Compact on the Placement of Children
ICWA	Indian Child Welfare Act
Ins	Insurance
Juv	Juvenile
Prelim	Preliminary Hearing, Preliminary Examination
PSI	Presentence Investigation, Presentence Report
PD, SPD	State Public Defender
S	State
Std	Standard
TPR	Termination of Parental Rights
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act
US	United States
Wis	Wisconsin

Abbreviations Specific to Volume IV (Juvenile)

AEM	Adult Expectant Mother
ASFA	Adoption and Safe Families Act
BIA	Bureau of Indian Affairs
CASA	Court-Appointed Special Advocate
CCI	Child Caring Institution
CEM	Child Expectant Mother
CHIPS	Child in Need of Protection or Services
EM	Expectant Mother
IEP	Individualized Education Program

ISP	Integrated Service Plan
JIPS	Juvenile in Need of Protection or Services
MDS	Multidisciplinary Screen
Primary agency	Agency primarily responsible for providing services to the child or juvenile
Primary dispositional agency	Agency primarily responsible for implementing dispositional order
QRFTF	Qualifying Residential Family-Based Treatment Facility
RCCCY	Residential Care Center for Children and Youth
SRCCCY	Secured Residential Care Center for Children and Youth
SJO	Serious Juvenile Offender
UC	Unborn Child
UCHIPS	Unborn Child in Need of Protection or Services

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JV 1: VENUE AND JURISDICTION

CHILDREN'S CODE

NOTE: This section applies exclusively to actions under Ch 48, the Children's Code, which includes provisions for Children in Need of Protection and Services (CHIPS), Unborn Children in Need of Protection and Services (UCHIPS), and Termination of Parental Rights (TPR). For provisions applicable to Delinquency and Juveniles in Need of Protection and Services (JIPS) see the section beginning on page 23, which covers Ch 938, the Juvenile Justice Code. For Ct proceedings involving an Indian child see **JV 17** (IWCA).

§ 48.01

1. Legislative Purpose for Ch 48 (Children's Code)

A. Paramount goal of Code is to protect children and unborn children (UCs)

1) Unity of family should be preserved, whenever appropriate, by strengthening family life through assisting parents and expectant mothers (EMs) in fulfilling their parental responsibilities

a. Cts and agencies, while assuring (unborn) child's health and safety, should assist parents and EMs in changing any circumstances in the home that might harm or necessitate removing the child or taking EM into custody

45 CFR 1356.21(b)

b. Reasonable efforts shall be made to maintain family unit and prevent unnecessary removal from home. However, child's health and safety to be paramount concern

- Reasonable efforts not required if circumstances governed by § 48.355(2d) are established

c. Cts should also recognize that they have the authority not to reunite a child with the family when it is not appropriate

2) Importance of eliminating unreasonable periods of time in substitute care should be recognized; impermanence and instability in family relationships are contrary to the welfare of children

B. Provide procedures through which children and other parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety

C. Recognize that (unborn) children have basic needs that must be provided for, including the need for food, clothing, and shelter; to be free from physical, sexual, and emotional abuse; to be free from harm caused by EM's habitual lack of self-control in use of AOD exhibited to a severe degree; to develop to their full potential; for safe and permanent homes

§ 48.01(1)(ag)

1) In appropriate cases, and consistent with the legal rights of parents, best interests of child may be served by removal from parents

§ 48.01(1)(am)

2) To meet needs of UC, Ct may order EM to receive treatment, including inpatient treatment, consistent with rights of EM

D. Protect children from harmful effects resulting from absence of parents or parent substitutes, from inability of parents/parent substitutes (other than financial inability) to provide care and protection for children and from the destructive behavior of parents/parent substitutes in providing care for them

1) Protect UC from harmful effects resulting from EM's habitual use of AOD exhibited to a severe degree

E. Ensure that children are provided good substitute parental care when necessary

F. Encourage innovative and effective prevention, intervention, and treatment approaches, including collaborative and community-based programming for (unborn) children, families, substitute families, and EMs

G. Divert (unborn) children from formal proceedings if consistent with their interests and public safety

H. Promote the adoption of children into safe and stable families, avoiding the impermanence of foster care

I. Allow for earliest possible termination of parental rights after reunification efforts fail and termination is in child's best interests

J. Reaffirm the duty of parent to support and maintain child during periods of substitute care

K. In cases of American Indian children, best interests of children must be determined consistent with provisions of Indian Child Welfare Act (ICWA), 25 USC 1901–1963

1) *See* **JV 17** (ICWA)

2. Definitions

Note: See also the ICWA definitions in **JV 17**.

§ 48.02(1)

A. Abuse—other than when referring to alcohol or drug abuse, means

1) Physical injury inflicted on child by other than accidental means

§ 48.02(14g)

a. Physical injury includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or great bodily harm as defined in § 939.22(14)

§ 48.02(1)(am)

b. When referring to UC, physical injury is serious physical harm and risk of such harm caused by habitual use of AOD exhibited to a severe degree by EM

2) Sexual intercourse or contact as defined in §§ 940.225, 948.02, 948.025, or 948.085

3) Sexual exploitation of child under § 948.05

4) Permitting, allowing, or encouraging a child to engage in prostitution

5) Forced viewing of or listening to sexual activity under § 948.055

6) Exposing genitals or pubic area under § 948.10

§ 48.02(1)(g)

7) Manufacturing methamphetamine in violation of § 961.41(1)(e) under any of the following circumstances:

a. With a child physically present during the manufacture

b. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home

c. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child

8) Emotional damage for which the child's parent, guardian, or legal custodian has refused, neglected, or been unable for reasons other than poverty to obtain necessary treatment or to take steps to ameliorate the symptoms

B. Adult—person 18 years of age or older, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law, or civil law or ordinance, adult means person 17 or older

C. "ASFA"—Adoption and Safe Families Act (See JV 9)

§ 48.02(2)

D. Child—when used without further qualification, means person less than 18 years of age, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law, or civil law or ordinance, child does not include person 17 or older

1) See definition of unborn child in **Sec. 2.P.** below

§ 48.13

E. CHIPS—child in need of protection or services

§ 48.02(2m)

F. Court—when used without further qualification, means Ct assigned to exercise jurisdiction under Ch 48 and Ch 938

§ 48.02(5j)

G. Emotional damage—harm to a child's psychological or intellectual functioning

1) Evidenced by one or more of the following characteristics exhibited to a severe degree

a. Anxiety; depression; withdrawal; outward aggressive behavior, OR

b. Substantial and observable change in behavior, emotional response, or cognition not within normal range for the child's age and stage of development

§ 48.02(8)

H. Guardian—person named by Ct having duty and authority of guardianship

§ 48.023

1) Duty and authority to make decisions about child's general welfare and having a permanent effect on child's life, including but not limited to

a. Authority to consent to marriage; enlistment in armed forces; medical, psychiatric, or surgical treatment; obtaining driver's license

b. Authority to represent child in legal actions and make other decisions of substantial legal significance

c. Right and duty of reasonable visitation of child

See § 938.34(4n)

d. Rights and responsibilities of legal custody if no other legal custodian or when child is under the supervision of Cty Dept on aftercare supervision from corrections

2) See also provisions for guardian for "CHIPS" in § 48.977(2)

3) See also provisions for guardians of the person for children in § 48.9795(2)(d). *See* **JV 16**

§ 51.45(2)(d)

I. Incapacitated—unconsciousness or judgment so impaired that person is incapable of making rational decision as evidenced objectively by such indicators as extreme physical debilitation, physical harm, threats of harm to self, others, or property as result of use of or withdrawal from alcohol or another drug

§ 51.45(2)(f)

J. Intoxicated—mental or physical functioning substantially impaired as result of use of alcohol or another drug

§ 48.02(10)

K. Judge—if used without further qualification, means the Judge of the Ct assigned to exercise jurisdiction under Ch 48 and Ch 938

§ 48.02(13)

L. Parent—includes biological parent, husband who consented to artificial insemination of wife, or parent by adoption

1) If nonmarital child who has not been adopted or whose parents have not intermarried, parent includes person conclusively determined from genetic test results to be the father under § 767.804, person who has acknowledged paternity under § 767.805 or a similar law of another State or, person adjudicated to be the father

2) Does not include person whose parental rights have been terminated

3) With respect to an Indian child and Indian parent, the above definitions apply; however, the adoption or acknowledgment of paternity can be pursuant to tribal law or custom

4) A parent's agent under § 48.979 could be a legal custodian but is not a "parent"

5) *See also* **Appendix 12** regarding establishing parentage via artificial reproductive technology

§ 48.02(15)

M. Relative—parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding generation as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 48.02(15), even if marriage is terminated by death or divorce

1) With respect to an Indian child, *relative* includes an extended family member as defined in § 48.028(2)(am), whether by blood, marriage, or adoption (including adoption under tribal law or custom)

§ 48.02(15)

2) **For purposes of placement**, "relative" also includes a parent of a sibling of the child who has legal custody of that sibling

§ 48.02(17m)

N. Special treatment or care—professional services that need to be provided child or family or EM

1) To protect well-being of child or physical health of UC from harmful effects resulting from habitual use of AOD by EM exhibited to a severe degree

2) To prevent placement of child outside home

3) To meet special needs of child

4) Term includes, but not limited to

a. Medical, psychological, or psychiatric treatment

b. AODA treatment

c. Other necessary and appropriate treatment

§ 48.133

O. UCHIPS—unborn child in need of protection or services

§ 48.02(19)

P. Unborn child—human being from time of fertilization to time of birth

NOTE

Q. For other definitions, see § 48.02

§ 48.185

3. Venue

§ 48.185(1)

A. Original actions

1) Venue may be had in any of the following

a. Cty where child or EM resides at time of filing of petition, or

St v Corey JG
(Int of Corey JG)
215 Wis. 2d 395 (1998)

- "Resides" means "domiciled"; place of child's fixed and permanent home; generally same as that of his/her parents

b. Cty where child or EM is present at time of filing of petition

c. Venue shall be in Cty where proposed adoptive parent or child resides at time petition is filed

2) Includes venue for

§ 48.13, § 48.133

a. CHIPS/UCHIPS proceedings

§ 48.135, § 48.14(5)
Chs 51, 55

b. Referral of children and EMs to proceedings for mental commitment or protective placement

§ 48.14(1), § 48.40–.435
§ 48.185(2)

c. TPR proceedings when child already placed and living outside home of child's parents pursuant to dispositional order

- In voluntary TPR, venue in Cty where birth parent or child resides at time petition filed

- In any other TPR proceeding, venue in Cty where order issued unless child's Cty of residence changed or parent has resided in different Cty of Wis for 6 months

§ 48.14(2), § 48.427,
§ 48.43, § 48.839,
§ 48.13, § 48.831

d. Appointment or removal of guardian

NOTE: For venue in cases involving a guardianship of the person of a child under § 48.9795, see **JV 16**, *infra*.

§ 48.14(3), § 48.81–.978
§ 48.988

e. Adoption proceedings

§ 48.988(5), (6)

f. Certain proceedings under the Interstate Compact on the Placement of Children (ICPC)

§ 48.14(6), § 765.02

g. Consent to marry

§ 48.14(7), § 115.80(7)

h. Parental appeals of school board decision on special education

§ 48.14(8), § 48.227

i. Runaway children in limited circumstances

§ 48.14(9), § 146.34(5)

j. Donation of bone marrow by a minor

§ 48.375(6)

3) Venue in proceedings for waiver of parental consent for abortion is in "any Ct"

§ 48.16

a. Any circuit Ct within Wis has jurisdiction to hear such petitions

§ 48.185(1), § 48.14(10)
§ 801.50(5s)

4) Venue of an action for a child abuse/harassment TRO/injunction shall be in Cty in which cause of action arose or where petitioner or respondent resides, except that venue may be in any Cty within 100-mile radius of Cty seat of Cty in which petitioner resides or in any Cty in which petitioner is temporarily living if petitioner falls into one of the categories outlined in § 801.50(5s)

§ 48.185(2)

B. Venue for actions to appoint guardian under § 48.977

Waukesha Cty v Dodge
Cty (In Int of Jason MH)
229 Wis. 2d 766
(CA 1999)

1) Venue must be in Cty where dispositional order issued, unless

a. Child's Cty of residence changed, or

b. Child's parent or EM resided in different Cty of Wis for 6 months

2) Includes venue for proceedings to

§ 48.40–.435

a. TPR when child placed outside home pursuant to CHIPS/UCHIPS dispositional order

§ 48.977

b. Appoint guardian of CHIPS child

§ 48.185(2)

3) Transfer of venue

a. Ct may allow transfer of venue, when

- Child's Cty of residence has changed, or
- Child's parent has resided in different Cty of Wis for 6 months

b. Person requesting transfer of venue must make motion to Ct and show good cause

c. If Ct grants motion

- Order case transferred to Cty of residence of child or parent and
- Transfer all appropriate records to Cty of residence of child or parent

§ 48.185(3)
§ 48.366

C. Venue for extended out-of-home care shall be in the Cty where the most recent order was issued

§ 48.185(4)

D. Venue for change of placement, revision, or extension for child or UC subject to dispositional order shall be in the Cty where the dispositional order was issued unless before the proceeding the Ct of that Cty determined that the proper venue for the proceeding lies in other Cty and transferred the case

St v Circuit Ct
(In Int of Tiffany W)
192 Wis. 2d 407
(CA 1995)

E. It is reversible error to exercise jurisdiction over a child who is subject to the jurisdiction of a Juv Ct from another Cty even if second Ct has concurrent jurisdiction and proper venue

1) Must defer to Ct that first assumed jurisdiction

4. Exclusive Jurisdiction of Ch 48 Court

A. Children in Need of Protection or Services (CHIPS)

St v Courtney E
(In Int of Courtney E)
184 Wis. 2d 592 (1994)

1) Petition that fails to allege protection or services that can be ordered by the Ct to address child's needs is insufficient

§ 48.979(1)(bm), (d)

2) Delegation of power by a parent may not defeat or supersede Ct's authority under § 48.13 and § 48.14

§ 48.13

3) Exclusive original jurisdiction IF there is allegation of need for protection or service that Ct can order (except as provided in § 48.028(3) in Indian child custody proceedings), and any of following exists

§ 48.13(1)

a. Child is without parent or guardian

§ 48.13(2)

b. Child has been abandoned

§ 48.13(2m)

c. Whose parent has relinquished custody and does not express an intent to return for the child

§ 48.195(1m)

- Child reasonably believed 72 hours old or younger

- Parent relinquished custody by delivering to law enforcement officer, emergency services practitioner, or hospital staff member or by leaving child in a newborn infant safety device per § 48.195(1r)

§ 48.195(2)

- Parent and any person assisting parent in relinquishment have right to remain anonymous

— Unless abuse/neglect of child or coercion of parent is reasonably suspected

§ 48.13(3)

d. Child is victim of abuse, as defined in § 48.02(1), including self-inflicted injuries and injuries inflicted by another

§ 48.13(3m)

e. Child is at substantial risk of becoming the victim of abuse

- Based on reliable and credible information that another child in the home has been the victim of such abuse

§ 48.13(4)

f. Parent or guardian signs petition that s/he is unable or needs assistance to

- Care for child, or

- Provide necessary special treatment or care for child (See **Sec. 2.N.**, *supra*, for definition)

§ 48.13(4m)

g. Guardian is unwilling or unable to sign petition and is unable or needs assistance to

- Care for child

- Provide necessary special treatment or care for child

§ 48.13(5)

h. Child was placed for care or adoption in violation of law

§ 48.13(8)

i. Child is receiving inadequate care during time parent is

- Missing, or
- Incarcerated, or
- Hospitalized, or
- Institutionalized

j. Child signs petition requesting jurisdiction, and

- Is at least 12, and
- Is in need of special treatment or care that custodian is unwilling, neglecting, unable, or needs assistance to provide needed special treatment or care (See **Sec. 2.N.**, *supra*, for definition)

§ 48.13(10)
ZE v St (In Int of AE)
163 Wis. 2d 270
(CA 1991)

k. Child's physical health is or will be seriously endangered, and

- Parent, guardian, or legal custodian neglects, refuses, or is unable to provide necessary care, food, clothing, shelter, or medical or dental care, and
- Neglect, refusal, or inability to provide is for reasons other than poverty

St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563

- Ct may have jurisdiction over child even if only one parent engages in neglectful conduct
- Child's status determined as of date petition is filed

§ 48.13(10m)

l. Child's parent, guardian, or legal custodian is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, shelter, or medical or dental care so as to seriously endanger the child's physical health

- Based on reliable and credible information that child's parent has neglected, refused, or been unable for reasons other than poverty to provide necessary care, food, clothing, shelter, or medical or dental care so as to seriously endanger physical health of another child in the home

§ 48.13(11)

m. Child is suffering emotional damage, and

- Parent, guardian, or legal custodian has neglected, refused, or been unable and is neglecting, refusing, or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms

- See definition of emotional damage at **2.G.**, *supra*

§ 48.13(11m)

n. Child is suffering from AODA impairment, and

- Impairment is exhibited to a severe degree, and

- Parent, guardian, or legal custodian is neglecting, refusing, or unable to provide treatment

§ 48.13(13), § 252.04

o. Child has not been immunized as required, and

- Not exempted for reasons of health, religion, or personal conviction

§ 48.13(14)

p. Parent is or will reside in QRFTF, and

- Parent signs petition, and

- DCF consents, and

- Child will reside with parent at QRFTF

§ 48.133

B. Unborn children in need of protection or services (UCHIPS)

1) Includes jurisdiction over their EMs who habitually use AOD exhibited to a severe degree, to extent there is substantial risk to physical health of UC unless EM receives prompt and adequate treatment

C. Mental commitments under Ch 51 and protective placements under Ch 55

§ 48.14(5)

1) Exclusive jurisdiction over children and adult expectant mothers (AEMs) in Ch 51 and Ch 55 proceedings

a. However, under § 938.135, Ch 938 Ct also has jurisdiction to proceed under Ch 51 or 55 if alleged delinquent or JIPS appears to meet statutory criteria

§ 48.135(1)

2) If child or AEM in CHIPS or UCHIPS proceeding appears to be developmentally disabled, mentally ill, alcoholic, or drug dependent, Ct may proceed under Ch 51 or 55

§ 48.135(2)

3) Chs 51 and 55 govern admissions, placements, or commitments to an inpatient facility

§ 48.135(2), § 48.19–.21
§ 48.193–.213
§ 48.345(14), § 48.347(6)

a. However, EM may be placed in treatment facility under certain circumstances

§ 51.01(10)

b. "Inpatient facility" means public or private hospital or unit that provides 24-hour care, and

c. Facility's primary purpose is diagnosis, treatment, and rehabilitation of mental illness, developmental disability, alcoholism, or drug abuse

4) See **Probate, Guardianship, and Mental Health Benchbook**

§ 48.14

D. Miscellaneous proceedings

§ 48.14(1), § 48.40–.435

1) TPR proceedings (See **JV 13**)

§ 48.14(2), (13)

2) Appointment and removal of guardian of person for child (See **JV 16**)

§ 48.14(3), § 48.81–.978
Holtzman v Knott
(In re Custody of HSH-K)
193 Wis. 2d 649 (1995)

3) Adoption proceedings (See **JV 14**) and visitation under § 48.925

§ 48.14(6), § 765.02

4) Consent to marry

§ 48.14(7), § 115.80(7)

5) Parental appeals of school board decisions on special education

§ 48.14(8), § 48.227

6) Runaway children in limited circumstances

§ 48.14(9), § 146.34(5)

7) Donation of bone marrow by child

§ 48.14(10), § 813.122
§ 813.125

8) Child abuse and harassment TROs and injunctions when respondent is a child

a. See **Abuse/Harassment** in **Family Benchbook** for procedure

§ 48.9795(12)

9) Petitions for visitation by grandparents or stepparents after death of either parent

§ 48.14(12)

10) Proceedings under § 48.028(8) for return of custody of Indian child to former parent or former Indian custodian, after

a. Ct has vacated or set aside order granting adoption of Indian child

b. Ct has entered order voluntarily terminating parental rights to Indian child of all adoptive parents of that child

§ 48.028(3)

Note: For other proceedings involving Indian child, see **JV 17**.

§ 48.373

E. Authorizing medical services

1) Ct may authorize medical services including surgical procedures when needed if

a. Ct determines reasonable cause exists for services

b. Child is within jurisdiction of Ct

c. Child consents

Comment
§ 48.9795

2) Temporary or emergency guardianship procedures and appointment may be necessary or more appropriate in some cases. *See infra* **JV 16** (Juvenile Guardianships)

§ 48.373(2)

3) Waiver of parental consent for abortion procedures must be followed to authorize abortion

5. No Ch 48 Court Jurisdiction

§ 48.15

A. Certain legal custody and guardianship proceedings

1) When placement challenged by habeas corpus

2) When legal custody or guardianship is incidental issue to determination of other causes (e.g., divorce or paternity)

§ 48.13, § 48.133, § 48.14

3) HOWEVER, jurisdiction of Ch 48 Ct is paramount in cases involving children alleged to come within provisions of §§ 48.13 (CHIPS), 48.133 (UCHIPS), or 48.14 (other proceedings), except as provided in § 48.028(3) in Indian child custody proceedings

§ 48.028(3)

4) See **JV 17**, regarding exclusive jurisdiction of tribal Cts in Indian child custody proceedings

§ 48.9795(2)(b)2.

5) See **JV 16**, regarding procedures in cases involving guardianships of the person for children when there is a pending Ch 938 proceeding

Doe v
Archdiocese of Milwaukee
211 Wis. 2d 312 (1997)

B. Claims for damages based on violation of § 48.981 (mandatory reporting law)

6. Ch 48 Court Jurisdiction over Person 17 or Older

§ 48.44, § 48.45
§ 48.355(4)

A. Ct has jurisdiction over person 17 or older if order is granted before person's 18th birthday

§ 48.366
1993–94 Stats

1) Ct has jurisdiction over matters relating to previously entered extended jurisdiction orders (petitions for discharge, etc.). Extended jurisdiction was replaced by Serious Juvenile Offender program on 7/1/96

§ 48.133
§ 48.45(1)(a), (am), (b)
§ 48.44

B. Jurisdiction over person 17 or older contributing to condition of CHIPS/UCHIPS

§ 48.45(1)(b)

1) CHIPS/UCHIPS proceeding need not result in adjudication

a. If natural and probable consequences of adult's act or failure to act would be to cause (unborn) child or EM to come within Ch 48 Ct's jurisdiction

§ 48.45(2), (3)

2) DA not precluded from prosecuting adults under criminal law

§ 48.45(2)

3) Hearing for adult order

a. Ct must cause personal service of notice 10 days before hearing of time, place, and purpose of hearing

b. Person must be given opportunity to be heard regarding allegation and contemplated order

c. Hearing procedure, as far as practicable, same as other cases in Ch 48 Ct or Cts of equity

§ 48.45(1)

4) Judge may make orders with respect to

a. Conduct of adult in relationship to (unborn) child and EM

§ 48.45(1)(a)

b. Determining adult's ability to provide for maintenance or care of child, including when, how, and where funds will be paid

§ 48.45(1r)

c. EM of UC found UCHIPS may be subjected to disposition under § 48.347(1)–(6)

§ 48.295(1)

d. Ordering physical, psychological, mental, or developmental examination or an AODA assessment of parent, guardian, or legal custodian whose ability to care for child at issue before Ct

CS v Racine Cty
(Contempt in Int of JS)
137 Wis. 2d 217
(CA 1987)

5) Judge may NOT order parent of CHIPS to obtain inpatient treatment without an involuntary commitment

§ 48.347(3)

a. However, AEM of UC found UCHIPS may be placed in CBRF

§ 48.45(2)

6) Failure to comply with Ct order may result in contempt proceeding

C. Jurisdiction over parent, guardian, or legal custodian of child found CHIPS

§ 48.45(1m)(a)

1) Ct may order parent, guardian, or legal custodian to

a. Comply with any conditions necessary for the child's welfare, including participating in mental health or anger management programming, individual or family counseling, or parent training and education, and making reasonable contribution toward cost of services

§ 48.45(2)

2) Hearing for adult order

a. Ct must cause personal service of notice 10 days before hearing of time, place, and purpose of hearing

b. Person must be given opportunity to be heard on contemplated order

c. Hearing procedure, as far as practicable, same as other cases in Ch 48 Ct

d. At hearing, adult may

- Be represented by counsel
- Produce witnesses
- Cross-examine witnesses

3) Failure to comply with Ct order may result in contempt proceeding

§ 48.45(3), § 948.40

D. Judge must refer allegations to DA including

§ 948.40(1)

1) Any person 17 or older who intentionally encourages or contributes to delinquency of any age child

§ 948.40(2)

2) Any person responsible for child's welfare, who, by disregard of welfare of child, contributes to delinquency of any age child

§ 948.40(3)

3) Any person creating situation in which child does not actually become delinquent but delinquency would be natural and probable consequence of person's action or failure to act

Ch 822

7. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

§ 48.027

A. All custody proceedings must comply with requirements of UCCJEA

§ 822.02(4)
PC v CC In Int of AEH)
161 Wis. 2d 277 (1991)
Brus C v Shawn D
(In re TPR of Steven C)
169 Wis. 2d 727
(CA 1992)

1) Custody proceeding includes child neglect and dependency, guardianship, TPR, and adoption proceedings, but does not include Juv delinquency proceeding

David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

2) Legislature intended UCCJA to apply only to interstate custody proceedings. Therefore, UCCJA does not mandate notice to, nor permit the participation of, as parties, intrastate contestants such as biological grandparents claiming a right of visitation to a child who is the subject of a TPR proceeding

Comment

a. Potential equal protection problem was noted, but not addressed by Wis Supreme Ct

Committee Note

b. Intent of UCCJEA would seem consistent with the above noted intent of the UCCJA

3) Provisions of ICWA supersede the provisions of the UCCJEA in Indian child custody proceedings

§ 822.04

4) Wis Ct shall treat an Indian tribe as if it were a state in regard to custody determinations made by tribal Ct

§ 822.01

B. Purpose of UCCJEA

§ 822.01(2)(a)

1) To avoid jurisdictional competition and conflict with Cts of other states

§ 822.01(2)(b)

2) To promote cooperation with Cts of other states so that custody decree rendered in state that can best decide case in interest of child

§ 822.01(2)(c)

3) To discourage continuing controversies over child custody

§ 822.01(2)(d)

4) To deter abductions

§ 822.01(2)(e)–(f)

5) To avoid relitigation of custody decisions of other states and facilitate enforcement of these decrees

§ 822.21
NJW v St (In Int of JT)
168 Wis. 2d 646
(CA 1992)

C. Jurisdiction to make initial custody determination

1) Except when exercising temporary emergency jurisdiction, Wis Ct has jurisdiction to make initial custody determination only if:

§ 822.21(1)(a)
Gooch v Gooch
(In Int of RJG)
107 Wis. 2d 704
(CA 1982)

a. Wis is "home state" of child at time of commencement of proceeding

§ 822.02(7)

- "Home state" means state where child lived with parent or person acting as parent for at least 6 consecutive months immediately before commencement. If child is less than 6 months old, home state is state in which child lived from birth with parent or person acting as parent

— Temporary absences count as part of the 6 months

§ 822.21(1)(a)

b. Wis was child's home state within 6 months before commencement and child is absent from state, but parent or person acting as a parent continues to live in Wis

§ 822.21(1)(a)
§ 822.02(13)
Stephen R v Ilana C
(Gdnship of Alexis C)
2011 WI App 13, ¶ 21
331 Wis. 2d 108

- To be a "person acting as a parent," and to have that person's residence drive a jurisdictional determination, the person must affirmatively assert a legal custody claim

§ 822.21(1)(b)

c. Ct of another state does not have "home state" jurisdiction or a Ct having "home state" jurisdiction has declined to exercise jurisdiction on the ground that Wis is more appropriate forum, **and**

- Child and parent(s) or person acting as parent have significant connection with Wis other than mere physical presence, **and**

- Substantial evidence is available in Wis concerning care, protection, training, and personal relationships of child

§ 822.21(1)(c)

d. All states having "home state" or "significant connection" jurisdiction declined to exercise jurisdiction on ground that Wis is more appropriate forum

§ 822.21(1)(d)

e. No Ct of any other state would have jurisdiction under paras. 1)a.–1)d. above

§ 822.21(3)
Tammie JC v Robert TR (In re TPR to Thomas JR), 2003 WI 61
262 Wis. 2d 217

f. Physical presence of, or personal jurisdiction over, party or child is not necessary or sufficient to make child custody determination

D. Exclusive, continuing jurisdiction

§ 822.22

1) Except for exercise of temporary emergency jurisdiction, Wis Ct that has made initial or modified custody determination while properly exercising jurisdiction under UCCJEA has exclusive, continuing jurisdiction until:

a. Wis Ct determines that neither child, nor child and one parent or person acting as parent, have significant connection with Wis, and substantial evidence is no longer available in Wis concerning the child's care, protection, training, and personal relationships, **or**

b. Wis Ct or Ct of another state determines that child, child's parent(s) and all persons acting as parent do not presently reside in Wis

2) Wis Ct that made custody determination but does not have exclusive, continuing jurisdiction may modify determination only if it has initial child custody determination jurisdiction (see paras. C.1)a.–C.1)e. above)

E. Jurisdiction to modify child custody determination

§ 822.23

1) Except when exercising temporary emergency jurisdiction, Wis Ct may not modify a child custody determination made by Ct of another state unless Wis Ct has home state or significant connection jurisdiction **and:**

a. Ct of other state determines that it no longer has exclusive, continuing jurisdiction or Wis would be a more convenient forum, **or**

b. Wis Ct or Ct of other state determines that child, child's parent(s), and all persons acting as parent no longer presently reside in the other state

F. Temporary emergency jurisdiction

§ 822.24
NJW v St (In Int of JT)
168 Wis. 2d 646
(CA 1992)

1) Wis Ct has temporary emergency jurisdiction if child is present in Wis and:

a. Child is abandoned, OR

b. It is necessary in an emergency to protect the child because child, sibling, or parent of child is subjected to or threatened with mistreatment or abuse

2) If there is existing child custody determination or child custody proceeding has been commenced in state having UCCJEA jurisdiction, emergency custody order shall specify period adequate to allow person to obtain order from Ct having jurisdiction

a. Emergency custody order remains in effect until order is obtained or specified period expires

3) If there is no custody determination entitled to be enforced under the UCCJEA and no child custody proceeding is pending in a Ct having jurisdiction, emergency custody order remains in effect until order is obtained from Ct having jurisdiction

a. If no child custody proceeding is commenced in Ct having UCCJEA jurisdiction, emergency jurisdiction order becomes final custody determination if order so provides and Wis becomes home state

4) Wis Ct exercising emergency jurisdiction or having learned that Ct of another state has exercised temporary emergency jurisdiction in regard to a child who is subject of Wis child custody determination or child custody proceeding shall immediately communicate with out-of-state Ct to resolve the emergency, protect child and parties, and determine period for duration of temporary order

G. See Interstate Conflicts, UCCJEA/PKPA in Family Benchbook for full discussion of Ch 822

8. Parental Kidnapping Prevention Act (PKPA)

A. See Interstate Conflicts, UCCJEA/PKPA in Family Benchbook

§ 48.028
25 USC 1901–1963
81 OAG 60

9. Indian Child Welfare Act (ICWA)

A. See ICWA discussion in JV 17

§ 48.988–.989

10. Interstate Compact on the Placement of Children (ICPC)

NOTE: 2009 Wis. Act 339 would create the Interstate Compact for the Placement of Children and abolish the Interstate Compact on the Placement of Children. However, the Act becomes effective upon enactment of the Interstate Compact for the Placement of Children by 35 states. As of 2018, only 12 states have enacted the Interstate Compact for the Placement of Children. Hence, the Interstate Compact on Children is still valid law in Wisconsin.

§ 48.988(2)

A. Definitions

1) Placement—arrangement for care of child in family free or boarding home or in child-caring agency or institution. Does NOT include institution for mentally ill, mentally defective, or epileptic; primarily educational institution; or hospital or other medical facility

2) Receiving state—state to which child is sent, brought, or caused to be sent or brought

3) Sending agency—a party state, its officer or employee; a subdivision of a party state, its officer or employee; Ct of a party state; person, corporation, association, charitable agency or other entity that sends, brings, or causes to be sent or brought any child to another party state

§ 48.988(3)

B. Conditions for placement

1) Sending agency must comply with every ICPC requirement and all receiving state laws before child placed in receiving state in foster care or as preliminary to adoption

2) Sending agency must give public authority in receiving state written notice of intention to send, bring, or place child in receiving state before doing so. Notice must contain

a. Name, date, and place of birth of child

b. Identity and address of parent or legal guardian

c. Name and address of proposed recipient of child

d. Full statement of reasons for proposed action and authority

3) Before child sent or brought, receiving state must notify sending agency, in writing, that proposed placement does not appear contrary to interests of child

§ 48.988(5)

C. Sending agency retains jurisdiction over child as if child had remained in sending state until child

1) Is adopted

2) Reaches majority

3) Becomes self-supporting

4) Is discharged with concurrence of receiving state

D. Sending agency has financial responsibility for support and maintenance of child during period of placement

E. Private charitable agency in receiving state may act as agent for private charitable agency of sending state

§ 48.988(6)

F. Juv delinquent may be placed in institution in another state pursuant to ICPC

1) Before sending child

a. Child must be given Ct hearing

b. Notice and opportunity to be heard must be given parent or guardian

2) Ct must find that

a. Equivalent facilities for child not available in sending state

b. Institutional care in receiving state is in best interest of child and will not produce undue hardship

§ 48.988(16), (5)

3) Sending Ct retains jurisdiction until child is discharged with concurrence of appropriate authority in receiving state

§ 48.988(8)

G. ICPC does not apply to

1) Sending or bringing child into receiving state by parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving child with such relative or non-agency guardian in receiving State if such person's full legal right to plan for child has been established by law before initiation of placement arrangement and has not been voluntarily terminated or diminished or severed by the action or order of any Ct
2) Any placement of child in receiving state pursuant to any other interstate compact

JUVENILE JUSTICE CODE

NOTE: This section applies exclusively to actions under Ch 938, the Juvenile Justice Code which includes provisions applicable to Delinquency and Juveniles in Need of Protection and Services (JIPS). See the section beginning on page 1 for provisions for Children in Need of Protection and Services (CHIPS), Unborn Children in Need of Protection and Services (UCHIPS), and Termination of Parental Rights (TPR).

§ 938.01

1. Legislative Purpose for Ch 938 (Juvenile Justice Code)

A. Promote Juv justice system capable of dealing with problem of Juv delinquency

B. The following are "equally important" purposes of the Juv Justice Code

1) Protect citizens from Juv crime
2) Hold Juv offenders directly accountable for their acts
3) Provide individual assessment of alleged/adjudicated delinquent Juv; to prevent further delinquent behavior through development of competency so that he or she is more capable of productive and responsible living
4) Provide due process through which Juv offenders and other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced
5) Divert Juvs from the Juv justice system through early intervention, when consistent with protection of the public

6) Respond to Juv's needs for care and treatment, consistent with the prevention of delinquency, each Juv's best interests, and protection of the public, by allowing Judge to utilize the most effective dispositional option

7) Ensure that victims and witnesses of acts committed by Juvs are, consistent with Ch 938 and Wis Constitution, afforded same rights as victims of crimes committed by adults and treated with dignity, respect, courtesy, and sensitivity

2. Definitions

§ 938.02(1)

A. Adult—person 18 years of age or older; except for purposes of investigating or prosecuting person alleged to have violated any State or federal law or civil law or ordinance, adult means person who has attained 17

§ 938.02(2m)

B. Court—Ct assigned to exercise jurisdiction under Ch 938 and Ch 48, a Municipal Ct exercising jurisdiction under § 938.17 or, when used with reference to a Juv subject to § 938.183, a Ct of criminal jurisdiction

§ 938.02(3m)

C. Delinquent—Juv who is 10 years or older who has violated any State or federal criminal law, EXCEPT

§ 938.18

1) When Juv waived into Adult Ct

§ 938.125, § 938.17

2) When Juv violates traffic, boating, snowmobile, ATV, utility terrain vehicle, or limited-use off-highway motorcycle offenses, or civil laws or ordinances

§ 938.183

3) When Juv is subject to § 938.183 (giving Adult Criminal Cts exclusive original jurisdiction over certain offenses committed by Juvs)

4) "Delinquent" also includes Juv who has committed contempt of Ct, as specified in § 938.355(6g)

§ 938.13
Comment

D. JIPS—Acronym for Juvs In need of Protection or Services, which includes Juvs who are runaways, uncontrollables, truants, "baby" delinquents (under 10), school dropouts, and NGI's or incompetents

§ 938.02(10)

E. Judge—Judge of Ct assigned to exercise jurisdiction under Ch 938 or Ch 48 or, if used with reference to a Juv subject to § 938.183, the Judge of a Ct of criminal jurisdiction, or a Municipal Ct Judge exercising jurisdiction under § 938.17

§ 938.02(10m)

F. Juvenile—when used without further qualification, means a person less than 18 years of age, except for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal law or a civil law or ordinance, Juv does not include a person who has attained the age of 17

§ 938.02(15)

G. Relative—parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding generation as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 938.02(15), even if marriage is terminated by death or divorce

1) With respect to an Indian Juv, *relative* includes an extended family member as defined in § 938.028(2)(a), whether by blood, marriage, or adoption (including adoption under tribal law or custom)

§ 938.02(15)

2) **For purposes of placement**, "relative" also includes a parent of a sibling of the Juv who has legal custody of that sibling

§ 938.02(18)

H. Trial—fact-finding hearing to determine jurisdiction

§ 938.02(20m)

I. Victim—person against whom delinquent act committed; parent, guardian, legal custodian if act against a child; representative designated by victim or family member when victim unable to physically or emotionally exercise rights; or if person deceased, family member or person who resided with deceased person; or guardian if act against incompetent person

For the definition of "victim" under Wis. Const. art. 1, § 9m(1)(a) (Marsy's Law), *see* **JV 12, Sec. 5.B.**

J. For other relevant definitions, see § 938.02(1)–(21)

K. For ICWA definitions, *see* JV 17

§ 938.185

3. Venue

A. Original actions

1) Venue may be had in any of the following

a. Cty where Juv resides at time of filing of petition, or

St v Corey JG
(Int of Corey JG)
215 Wis. 2d 395 (1998)

- "Resides" means "domiciled," place of Juv's fixed and permanent home, generally same as that of his/her parents

b. Cty where Juv is present, or

c. Cty where violation of State law or county, town, or municipal ordinance occurred

- Ct of Cty in which violation occurred may, after adjudication, transfer proceeding to Cty of residence for disposition if Ct of Cty of residence agrees to transfer

St v Corey JG
(Int of Corey JG)
215 Wis. 2d 395 (1998)

2) State must prove venue beyond a reasonable doubt in delinquency proceedings. However, venue is not an element of crime and becomes an issue before trier of fact only if contested by Juv

3) Includes venue for

§ 938.12

a. Delinquency proceedings

§ 938.125(1)

b. Civil law and ordinance violations

§ 938.125(2)

c. Truancy proceedings

§ 938.13

d. JIPS proceedings

§ 938.135, Chs 51, 55

e. Referral of Juv to proceedings for mental commitment or protective placement

§ 938.18

f. Waiver to Adult Ct proceeding

§ 938.14, § 938.999

g. Proceedings under the Interstate Compact for Juveniles (§ 938.999). *See* **Sec. 10**, *infra*

§ 938.185(3)
§ 301.45(6)(a), (ag)

4) Venue for violation of sexual offender registration requirement under § 301.45(6)(a) or (ag) is in Cty of Juv's residence at time petition filed or

a. If Juv has no Cty of residence, venue may be in any of following:

- Any Cty where Juv resided during period subject to registration requirement

- Cty where Juv adjudicated delinquent or found not responsible by reason of mental disease or defect

- Cty where Juv found to be sexually violent person, if required to register under § 301.45(1g)(dt)

- Any Cty where Juv has been student or been employed, if required to register only under § 301.45(1g)(f) or (g)

§ 938.185(2)

B. Venue for actions to modify dispositional orders

1) Venue must be in Cty where dispositional order issued, unless before the proceeding the Ct of that Cty determined that proper venue for the proceeding lies in another Cty and transferred the case, along with all appropriate records, to that Cty

2) Includes venue for proceedings to

§ 938.363

a. Revise a dispositional order

§ 938.365

b. Extend a dispositional order

§ 938.355(4)

c. Terminate or revise an extended jurisdiction order (release to or revocation of community supervision or aftercare)

NOTE
§ 48.366(5), (6)
1995–96 Stats

- Extended jurisdiction abolished for any offense committed after June 30, 1996. Juv Cts will continue to hear petitions to revise or terminate extended jurisdiction orders

§ 938.185(2m)
§ 938.366(1)(a)

C. Venue for extended out-of-home care shall be in the Cty where the most recent order was issued

St v Circuit Ct
(In Int of Tiffany W)
192 Wis. 2d 407
(CA 1995)

D. It is reversible error to exercise jurisdiction over a Juv subject to the jurisdiction of a Juv Ct from another Cty even if second Ct has concurrent jurisdiction and proper venue

1) Must defer to Ct that first assumed jurisdiction

4. Exclusive Juvenile Court Jurisdiction

A. Delinquent Juvs

§ 938.12(1), § 938.183

1) Exclusive jurisdiction over Juv 10 or older alleged to be delinquent

Appendix 4
Original Adult Court
Jurisdiction

a. Does NOT include Juvs subject to § 938.183 (giving Adult Criminal Cts original jurisdiction over certain offenses and Juvs), Juvs who are waived, or Juvs subject to § 938.17

St v Martin
191 Wis. 2d 646
(CA 1995)

- Original jurisdiction in Adult Ct is constitutional

§ 938.12(2)
St v Avery
80 Wis. 2d 305 (1977)
DV v St (In re DV)
100 Wis. 2d 363
(CA 1981)

b. Juv's age determined at time petition filed

St v Sanders
2018 WI 51
381 Wis. 2d 522
St v Annala
168 Wis. 2d 453 (1992)
St v LeQue
150 Wis. 2d 256
(CA 1989)

- Age at date petition filed determines whether Adult Ct has subject-matter jurisdiction over criminal proceeding

62 OAG 229,
70 OAG 143

c. Includes violations of criminal laws in other states

§ 938.125, § 938.17

d. Does not include traffic, boating, snowmobile, ATV, utility terrain vehicle, or limited-use off-highway motorcycle offenses, or civil law and ordinance violations

§ 938.18(1)
Appendix 5
Waiver

e. Juv Ct may waive its exclusive jurisdiction in favor of Adult Ct if

- Juv was age 15 or older at time offense allegedly committed

- Juv was age 14 or older at time offense allegedly committed and charge is manufacture or delivery of controlled substance [§ 961.41], felony murder [§ 940.03], 2nd-degree reckless homicide [§ 940.06], 1st- or 2nd-degree sexual assault [§ 940.225(1) or (2)], taking hostages [§ 940.305], kidnapping [§ 940.31], armed burglary [§ 943.10(2)], armed robbery [§ 943.32(2)], robbery of a financial institution [§ 943.87], or any drug or other felony if committed at the request of or for the benefit of a criminal gang. See **Appendix 5** for outline of waiver situations

Appendix 4
Original Adult Court
Jurisdiction

- NOTE: Sec. 938.183 gives Adult Criminal Cts original jurisdiction over Juvs accused of certain offenses. See **Appendix 4** for list of offenses

- Criminal Cts are also given jurisdiction over Juvs previously waived or charged in the Adult Ct. See **Sec. 6**, Original Adult Ct Jurisdiction, below

St v LeQue
150 Wis. 2d 256
(CA 1989)

- Juv's age at time of offense determines Juv Ct's authority to waive its exclusive jurisdiction

St v Pablo R
(In Int of Pablo R)
2000 WI App 242
239 Wis. 2d 479

— However, if Juv, who was not subject to waiver at time delinquency petition filed because of charge and age considerations, absconds and turns 17 before adjudication, State may file waiver petition and Ct has authority to waive

— See Waiver to Adult Ct, **JV 5**

MLS v St (In Int of MLS)
157 Wis. 2d 26 (CA 1990)

f. Includes jurisdiction over Indian Juvs alleged to have committed delinquent acts off reservation

St v Elmer JK
(In Int of Elmer JK)
224 Wis. 2d 372
(CA 1999)

- Even if Tribal Ct has continuing jurisdiction over tribal member for delinquent acts committed on the reservation

§ 938.185(4)

- If Indian Juv subject to Tribal Ct order commits off-reservation delinquent act, see requirements at § 938.185(4)

St v Trent N
(In Int of Trent N)
212 Wis. 2d 728
(CA 1997)

g. Includes jurisdiction over Juvs for whom administrative hearing procedures under an individualized educational program are ongoing

§ 938.12(2)
Miller v Quatsoe
348 FS 764
(ED Wis 1972)
St v Avery
80 Wis. 2d 305 (1977)
St v Becker
74 Wis. 2d 675 (1976)
St v KAP (In Int of KAP)
159 Wis. 2d 384
(CA 1990)

2) Ct retains jurisdiction if Ct proceedings started before Juv is 17, but Juv turns 17 before facts admitted at plea hearing or adjudicated at fact-finding

DWB v St
(In Int of DWB)
158 Wis. 2d 398 (1990)

a. Proceedings are started with filing of delinquency petition

Comment

b. Repealed § 48.12(2) (1993–94) gave Ct specific options in this situation, including waiver, consent decree, or dismissal. By retaining jurisdiction, Ct has authority to waive jurisdiction and enter into a consent decree. Unclear if Ct can make delinquency finding and enter dispositional order. See § 938.34 re: delinquency and definition of Juv in § 938.02

St v Becker
74 Wis. 2d 675 (1976)
St v Montgomery
148 Wis. 2d 593 (1989)
St v Bergwin
2010 WI App 137
329 Wis. 2d 737

- State may not intentionally delay charging child to avoid Juv Ct jurisdiction

B. Juvs in Need of Protection or Services (JIPS)

§ 938.13

1) Exclusive original jurisdiction over Juv alleged to be in need of protection or service that Ct can order (except as provided in § 938.028(3) in Indian Juv custody proceedings), AND

§ 938.13(4)

a. Parent or guardian signs petition requesting jurisdiction and states that s/he is unable to control Juv

§ 48.979(1)(a), (bm), (d)

- Delegation of power by a parent (grants care and custody) may not defeat or supersede Ct's authority under § 938.13 or § 938.14

§ 938.13(6)

b. Juv is habitually truant from school, and

- Required school attendance activities under § 118.16(5) completed

- EXCEPT as provided in § 938.17(2), which grants concurrent jurisdiction to Municipal Cts over truants and specifically authorizes simultaneous proceedings in Juv and Municipal Ct

§ 938.13(6m)

c. Juv is a school dropout under § 118.153(1)(b)

§ 938.13(7)

d. Juv is habitually truant from home, and

- Juv, parent, guardian, or relative where Juv resides signs petition, and

- Reconciliation efforts have failed

§ 938.13(12)

e. Juv under 10 years old committed a delinquent act

St v Thomas JW
(In Int of Thomas JW)
213 Wis. 2d 264
(CA 1997)

- JIPS proceedings of this nature are civil. State need not prove *Miranda* compliance to admit custodial statement

§ 938.13(14)

f. Juv has been determined to be not responsible for delinquent act by reason of mental disease or defect or has been determined not competent to proceed in a delinquency action

St v Courtney E
(In Int of Courtney E)
184 Wis. 2d 592 (1994)

2) Petition that fails to allege protection or services that can be ordered by Ct to address Juv's needs is insufficient

§ 938.17(1)

C. Certain civil law and ordinance violators

1) Juvs any age alleged to have

§ 342.06(2)

a. Made false statement in application for certificate of title for vehicle subject to registration

§ 344.48(1)

b. Forged proof of financial responsibility regarding automobile liability policy or bond

§ 30.67(1)

c. Violated duty when involved in a boating accident in which death or injury occurs

§ 346.67

d. Violated duty upon striking person or attended or occupied vehicle when death or injury occurs

§ 938.17, § 938.125

2) Juvs any age alleged to have violated a law punishable by a civil forfeiture, except when Municipal Ct has concurrent or exclusive jurisdiction

§ 938.17(2)(b)

3) Juvs age 11 or younger alleged to have violated an ordinance

§ 938.17(2)(a)

a. EXCEPTION: Municipal Cts have concurrent jurisdiction if truancy alleged

§ 938.17(2)(b)

4) Juvs age 12 or older alleged to have violated an ordinance when there is no Municipal Ct

D. Mental commitments under Ch 51 and protective placements under Ch 55

§ 938.135(1)

1) If Juv in delinquency or JIPS proceeding appears to be developmentally disabled, mentally ill, alcoholic, or drug dependent, Ct may proceed under Ch 51 or 55

§ 938.135(2)

2) Chs 51 and 55 govern admissions, placements, or commitments to an inpatient facility

a. However, Ct may order Juv placed in inpatient treatment facility pursuant to delinquency or JIPS finding under conditions established at § 938.34(6)(am)

§ 51.01(10)

b. "Inpatient facility" means public or private hospital or unit that provides 24-hour care, and

c. Facility's primary purpose is diagnosis, treatment, and rehabilitation of mental illness, developmental disability, alcoholism, or drug abuse

§ 938.14

E. Proceedings under § 938.999 (Interstate Compact for Juveniles). *See* Sec. 10, *infra*

§ 938.17(2)

5. Concurrent Juvenile Court Jurisdiction

A. Ordinance violations—concurrent with Municipal Ct

1) Juvs age 12 or older alleged to have violated an ordinance

a. EXCEPT when exclusive jurisdiction has been given to Criminal, Civil, or Juv Cts (See **Sec. 4**, *supra*, and **Sec. 6**, *infra*), and

§ 938.17(2)(a)1m.

b. EXCEPT when exclusive jurisdiction has been given to Municipal Ct for violations of municipal traffic ordinances

§ 938.13(6)

B. Truancy violations—concurrent with Municipal Ct

1) Juvs any age alleged to be an habitual truant (See **JV 10**)

6. Original Adult Court Jurisdiction That May Be Transferred Back (Reverse Waiver)

§ 938.183
Appendix 6, 7
Jurisdiction by Offense,
Jurisdiction by Age

A. Notwithstanding §§ 938.12 and 938.18, Adult Ct has exclusive original jurisdiction over all the following

§ 938.183(1)(a)

1) Juv adjudicated delinquent and

a. Is alleged to have committed battery by prisoner [§ 940.20] or assault by prisoner [§ 946.43] while placed in a Juv correctional facility, Juv detention facility, or secured RCCCY

§ 940.20(2m)

b. Who is alleged to have committed battery to an aftercare agent or a community supervision agent

§ 938.183(1)(ar)

c. Criminal Ct also has original jurisdiction over offense which can be joined with offenses specified in a. and b. above pursuant to provisions of § 971.12(1)

St v Martin
191 Wis. 2d 646 (CA 1995)

d. Statute does not violate equal protection

§ 938.183(1)(b)

2) Juv alleged to have committed any crime if he/she previously waived and convicted in Adult Ct or previously waived and adult proceedings are pending

§ 938.183(1)(c)

3) Juv alleged to have committed any crime if previously convicted of an offense over which Adult Ct has exclusive jurisdiction or proceedings are pending in Adult Ct for such offense

§ 938.183(1)(am), (ar)

4) Juv 10 or more years of age alleged to have committed first-degree or attempted first-degree intentional homicide, first-degree reckless homicide or second-degree intentional homicide and any "joinable offense" under § 971.12(1)

§ 938.183(1m)(c)

5) If Criminal Ct does not reverse waive Juv specified in paras. 1)–4), but Juv is found to have committed a lesser or joined offense (but not offense giving Criminal Ct original jurisdiction to which § 938.183(1)(ar) offense was joined), Criminal Ct **shall** find Juv delinquent and impose a Juv disposition if **any** of the following apply

§ 938.183(1m)(c)1.

a. Criminal Ct finds Juv committed lesser offense or joined offense that is **not** a violation of § 940.20(1) or (2m) or § 946.43 [battery by prisoner, battery to aftercare agent or community supervision agent, or assault by prisoner] "under circumstances described in § 938.183(1)(a)," is **not** an attempt to violate § 940.01 [first-degree intentional homicide] and is **not** a violation of § 940.02 or § 940.05 [first-degree reckless or second-degree intentional homicide] "under the circumstances described in § 938.183(1)(am)," and is **not** an offense for which Juv Ct could waive jurisdiction

- For example: Juv accused of battery by prisoner and disorderly conduct but only found to have committed disorderly conduct, or 12-year-old Juv accused of first-degree intentional homicide but found to have committed homicide by negligent handling of a dangerous weapon—both Juvs would be found delinquent and have a Juv disposition imposed

OR

§ 938.183(1m)(c)2.

b. Criminal Ct finds Juv committed lesser offense or joined offense that **is** a violation of § 940.20(1), (2m) or § 946.43 "under circumstances described in § 938.183(1)(a)," that **is** an attempt to violate § 940.01 or a violation of § 940.02 or § 940.05 "under circumstances described in § 938.183(1)(am) or that **is** a "waivable offense," but Criminal Ct determines, after consideration of waiver criteria under § 938.18(5), that Juv has proved by clear and convincing evidence that it would be in the best interests of Juv and public to find him/her delinquent and impose a Juv disposition

- For example: 14-year-old Juv accused of first-degree intentional homicide, but found guilty of second-degree intentional homicide

St v Hazen
198 Wis. 2d 554 (CA 1995)

6) Confidentiality provisions of Juv Justice Code are not applicable to Adult Ct proceedings under § 938.183

§ 938.183(1m)(a)

B. Juv under 15 years of age may be held in secure custody only in Juv detention facility or Juv portion of Cty jail

§ 938.183(1m)(b)
§ 970.032(2)
§ 971.31(13)
St v Kleser
2010 WI 88
328 Wis. 2d 42
St v Verhagen
198 Wis. 2d 177 (CA 1995)

C. Criminal Ct may "reverse waive" Juv in paras. A1)–4) if Juv proves by preponderance of evidence all the following at a reverse-waiver hearing

1) If convicted, Juv could not receive adequate treatment in criminal justice system, and

2) Reverse waiver would not depreciate seriousness of offense, and

3) Retaining jurisdiction is not necessary to deter this and other Juvs from committing an original jurisdiction offense

St v Armstead
220 Wis. 2d 626 (CA 1998)

a. Standards for reverse waiver are not unconstitutionally vague

D. See also Criminal Benchbook, Juvenile/Adult Matters

7. Original Adult Court Jurisdiction That May Not Be Transferred Back (No Reverse Waiver)

§ 938.183(1m)(c)3.
Appendix 6, 7
Jurisdiction by Offense,
Jurisdiction by Age

A. Criminal Cts have exclusive original jurisdiction over Juv alleged to have attempted or committed first-degree intentional homicide, § 940.01, or alleged to have committed first-degree reckless homicide, § 940.02, or second-degree intentional homicide, § 940.05

1) Such Juvs are subject to the procedures and penalties of the Criminal Code unless

a. Criminal Ct finds Juv has not attempted or committed first-degree intentional homicide and has not committed first-degree reckless or second-degree intentional homicide, AND

b. Criminal Ct determines, after consideration of waiver criteria under § 938.18, that Juv has proved by clear and convincing evidence that it would be in best interest of Juv and public to find him/her delinquent and impose Juv disposition

§ 938.183(3)

B. Juv subject to a criminal penalty under § 938.183(1m) may be placed in State prison when he/she turns 17, except DOC may not place any person under 18 in Boscobel maximum security institution

C. See also Criminal Benchbook, Juvenile/Adult Matters

8. Non-delinquent Original Adult Court Jurisdiction

A. Certain civil law and ordinance violations

§ 938.17(1)

1) Juvs age 16 or older alleged to have violated

§ 30.50–.80

a. Boating regulations, EXCEPT

§ 30.67(1)

- If accident, and death or injury occurs

Chs 341–351

b. Vehicle and snowmobile regulations, EXCEPT

§ 342.06(2)

- False statement in application for certificate of title for vehicle subject to registration

§ 344.48(1)

- Forged proof of financial responsibility regarding automobile liability policy or bond

§ 346.67

- Violation of duty upon striking person or attended or occupied vehicle when death or injury occurs

§ 345.20

c. Traffic regulations including

Ch 194

- Motor vehicle transportation violations

Chs 341–349

- Vehicle regulations for which penalty is a forfeiture

§ 349.06

- Violation of a traffic ordinance adopted in strict conformity with state law

§ 938.17(2)(a)1m.

- Violations of municipal traffic ordinances by Juvs 12 years of age or older

— Municipal Cts have exclusive jurisdiction

§ 346.63(2m)

d. Underage drinking and driving (“absolute sobriety”)

§ 349.06(1)

- Circuit Cts and Municipal Cts have jurisdiction

§ 345.28(1)

e. Non-moving traffic regulations

§ 23.33

f. ATVs and utility terrain vehicles

§ 23.335

g. Limited-use off-highway motorcycles

§ 938.15

B. Certain legal custody and guardianship proceedings

1) Where placement challenged by habeas corpus

2) Where legal custody or guardianship is incidental issue to determination of other causes (e.g., divorce or paternity)

§ 938.12, § 938.13

3) HOWEVER, jurisdiction of Ch 938 Ct is paramount in cases involving Juvs alleged to come within provisions of §§ 938.12–938.14, except as provided in § 938.028(3) in Indian Juv custody proceedings

9. Juvenile Court Jurisdiction over Persons 17 and Older

§ 938.44, § 938.355(4)

A. Ct has jurisdiction over Juv 17 or older if action is commenced before Juv's 17th birthday

1) See Serious Juvenile Offender (SJO) at **JV 8**

§ 938.44, § 938.45(1)(a)

B. Jurisdiction over person 17 or older contributing to delinquency of Juv or to condition of JIPS

§ 938.45(1)(b)

1) JIPS or delinquency adjudication not required

§ 938.45(2), (3)

2) DA not precluded from prosecuting adults under criminal law

§ 938.45(2)

a. Ct must refer matter to DA

3) Hearing for adult order

a. Ct must cause personal service of notice 10 days before hearing of time, place, and purpose of hearing

b. Person must be given opportunity to be heard regarding allegation and contemplated order

c. Hearing procedure, as far as practicable, same as other cases in Juv Ct or Cts of equity

§ 938.45(1)

4) Ct may make orders with respect to

a. Conduct of adult in relationship to Juv

b. Determining adult's ability to provide for maintenance or care of Juv including when, how, and where funds will be paid

§ 938.295(1)

c. Ordering physical, psychological, mental, or developmental examination or an AODA assessment of parent, guardian, or legal custodian whose ability to care for Juv at issue before Ct

§ 938.45(1r)

d. Ordering custodial parent to pay restitution or a forfeiture, if financially able to do so

CS v Racine Cty
(Contempt in Int of JS)
137 Wis. 2d 217 (CA 1987)

5) Judge may NOT order parent of JIPS to obtain inpatient treatment through an involuntary commitment

§ 938.45(2)

6) Failure to comply with Ct order may result in contempt proceeding, and if violation constitutes a crime, adult may be prosecuted

C. Jurisdiction over parent, guardian, or legal custodian of Juv adjudged delinquent or found JIPS for AOD use or abuse if Juv ordered to receive AOD treatment or education

§ 938.45(1m)(a)

1) Ct may order parent, guardian, or legal custodian to comply with any conditions necessary for the Juv's welfare, including participation in mental health treatment, anger management, individual or family counseling, or parent training

§ 938.45(1m)(b)

a. May not order inpatient treatment

b. Parent may be ordered to pay toward cost of programming

§ 938.45(2)

2) Hearing for parent, guardian, or legal custodian order

a. Ct must cause personal service of notice 10 days before hearing of time, place and purpose of hearing

b. Person must be given opportunity to be heard on contemplated order

c. Hearing procedure, as far as practicable, same as other cases in Juv Ct

d. At hearing, adult may

- Be represented by counsel
- Produce witnesses
- Cross-examine witnesses

3) Failure to comply with Ct order may result in contempt proceeding

§ 938.45(3), § 948.40

D. Judge must refer allegations to DA including

§ 948.40(1)

1) Any person who intentionally encourages or contributes to delinquency of any age Juv

§ 948.40(2)

2) Any person responsible for Juv's welfare, who by disregard of welfare of Juv, contributes to delinquency of any age Juv

§ 948.40(3)

3) Any person creating situation in which Juv does not actually become delinquent but delinquency would be natural and probable consequence of person's action or failure to act

§ 938.999

10. Interstate Compact for Juveniles

§ 938.999(1)

A. Purpose is to do all of the following, through joint and cooperative action among the compacting states

1) Ensure that adjudicated Juvs and status offenders are provided with adequate supervision and services

2) Ensure that public safety interests of citizens are protected

3) Return runaway, absconded, or escaped Juvs

4) Make contracts for institutionalization of delinquents needing special services

5) Effectively track and supervise Juvs

6) Equitably allocate costs, benefits, and obligations among compacting states

7) Establish procedures to manage movement of Juv offenders

8) Ensure immediate notice of offenders authorized to travel or relocate across state lines

9) Establish procedures to resolve pending charges or detainers

10) Establish uniform data collection and reporting

11) Monitor compliance with governing rules and address noncompliance

12) Coordinate training and education for officials

13) Coordinate the implementation and operation of this compact with other compacts

§ 938.999(2)

B. Definitions

1) Compacting state—state that has enacted the enabling legislation for this compact

2) Court—Ct having jurisdiction over delinquent, neglected, or dependent Juvs

3) Juvenile—person defined as a Juv under the law of any compacting state or by the rules, including

a. Accused or adjudicated delinquent,

b. Accused or adjudicated status offender, and

c. Nonoffender (a person in need of supervision, but who has not been charged with or found to have committed an offense)

C. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purpose of the compact

1) The rules promulgated by the interstate commission can be found at https://www.juvenilecompact.org

§ 938.9995

D. Cts shall do all of the following to expedite interstate placements of Juvs

1) Cooperate with Cts of other states in sharing information

2) Obtain information and testimony from agencies and parties located in other states without requiring interstate travel

3) Permit parents, Juvs, other necessary parties, and Attys to participate without requiring interstate travel

JV 2: INITIATION OF PROCEEDINGS

NOTE: Certain provisions of this chapter apply to delinquency and JIPS cases but not CHIPS or UCHIPS cases. These provisions are clearly indicated in the text. Please carefully note these limitations in using this chapter.

1. Initial Intake

A. Judicial duties

§ 48.06, § 938.06
§ 48.24(6), § 938.24(6)
§ 48.245(9), § 938.245(9)

1) Circuit Judges of each Cty must establish written policies governing intake process subject to approval of Chief Judge of district

§ 48.06(1)(a)2.
§ 938.06(1)(a)2.

a. In counties with a population of 750,000 or more, Chief Judge must establish written policies governing services for Juv matters

§ 48.067(9)
§ 938.067(9)

b. Intake workers may assist in developing written policies

Wis. Const. art. I, § 9m
(Marsy's Law)
§ 938.346(5)
§ 950.02
§ 938.02(20m)(a)1.–5.

c. Must include provisions relating to notice to victims of their right to notice of hearings, etc. See **JV 12**

- For definitions of victim, see **JV 1**, Juv Justice Code, **Sec. 2.I.**, and **JV 12, Sec. 5.B.**

§ 48.10, § 938.10

2) Judge may act as intake worker

a. Discretionary power of Judge

b. Judge disqualified from further participation in proceedings when

- Judge recommends filing petition, or
- Judge enters into informal disposition/deferred prosecution with child/Juv and child's/Juv's parents, or
- Citation is issued

§ 48.067, § 938.067

B. Intake duties

§ 48.067(1)–(5)
§ 938.067(1)–(5)

1) Custody Intake—Decision to hold or release

a. Screen children/Juvs/EMs taken into custody to deter–mine whether they will be released or held in custody

b. Services to be provided 24 hours a day, 7 days a week

§ 48.067(6)–(9)
§ 938.067(6)–(9)

2) Ct Intake—Decision to refer to Juv Ct or divert

a. Screen referral information in order to recommend that case be closed, petition filed, or informal disposition agreement in CHIPS/UCHIPS cases or deferred prosecution agreement in JIPS or delinquent cases be entered

§ 48.24(1), § 938.24(1)

b. Intake worker to receive all information indicating that (unborn) child/Juv should be referred to Ct as

§ 938.12

- Delinquent, or

§ 48.13, § 48.133, § 938.13

- In need of protection or services (CHIPS, UCHIPS, or JIPS), or

§ 938.17(2)

- Civil law or ordinance violator when citation not issued

c. Does NOT apply when citation issued for ordinance violation

§ 938.24(2r)

d. If Indian Juv subject to Tribal Ct order commits off-reservation delinquent act, see requirements of consultation with tribal officials at § 938.24(2r)

C. Intake inquiry

§ 48.24(1), § 938.24(1)

1) Intake worker must conduct on behalf of Ct

§ 48.24(6), § 938.24(6)

a. Must perform intake duties in accordance with written policies established by Ct to govern intake process

§ 938.24(7)

b. If citation issued, it is not subject to intake inquiry for purpose of recommending deferred prosecution

§ 48.24(1), § 938.24(1)

2) Purpose

a. To determine whether facts available to establish Ct's prima facie jurisdiction

b. To determine best interests of (unborn) child/Juv and public with regard to any action contemplated

§ 48.195(2)(c)

c. In relinquishment cases, to make initial deter–mination that there is no reasonable cause to suspect child has been the victim of abuse or neglect, or that person assisting parent has coerced parent into relinquishing custody of child

D. Intake interview

§ 48.24(2)
§ 938.24(2)

1) Intake worker may interview child/Juv/EM and parents face-to-face as part of intake inquiry, but cannot compel attendance and must notify child/Juv/EM, parent, guardian, and legal custodian

a. For intake under § 48.981(3)(c)1., see *Michael C v Gresbach*, 479 F Supp 2d 914 (ED Wis 2007), *aff'd*, 526 F3d 1008 (7th Cir 2008)

§ 48.243(1)
§ 938.243(1)

2) Intake worker shall personally advise child/Juv/EM and parents of

a. Rights, and

b. Nature and consequences of proceedings, and

c. Possibility that referral may result in petition to Ct

E. Intake determination to refer case to Ct

§ 48.24(3)
§ 938.24(3)

1) Intake worker requests filing of petition by DA, Corp Counsel, prosecutor, or other appropriate official

JWT v St (In Int of JWT)
159 Wis. 2d 754, 763
(CA 1990)

a. Information indicating that child should be referred to Ct is quantum of information that would allow reasonable intake worker to evaluate appropriate intake disposition of case

Antonio MC v St
(In Int of Antonio MC)
182 Wis. 2d 301
(CA 1994)

b. Intake worker need not specifically request filing of petition. Referral from intake requesting DA "review and advise" is adequate

§ 48.24(5), § 48.315(3)
§ 938.24(5), § 938.315(3)

c. If CHIPS/UCHIPS petition not filed within 60-day time period or if JIPS/delinquency petition not filed within 40-day time period:

- Ct shall grant appropriate relief under § 48.315(3)/§ 938.315(3)

- Failure to object to untimely filing waives objection to Ct's competency to act

§ 938.24(5)
§ 48.24(5)

d. Intake worker shall request that petition be filed, enter into deferred prosecution agreement (in Ch 938 case)/ informal disposition (in Ch 48 case), or close case within 40 days after receipt of referral information for delinquency petition or 60 days for CHIPS/UCHIPS petition. Failure to comply is subject to § 938.315(3)/ § 48.315(3)

§ 48.245(5m)
§ 938.24(5)
§ 938.25(2)(b)

e. If intake worker refuses to request filing petition, appropriate official has 20 days after receipt of notice of informal disposition in CHIPS/UCHIPS cases or case closure or deferred prosecution in JIPS/delinquency cases to file petition

§ 48.25(3), § 938.25(3)

f. If appropriate official refuses to file petition

- Ct may order filing on request of any person or on own motion

— Ct must hold hearing on request

— Ct that orders filing may not hear matter

§ 938.25(2m)

- Prosecutor must make reasonable effort to notify known victims of decision in delinquency [§ 938.12] and JIPS [§ 938.13(12)] cases

§ 48.25(2), § 938.25(2)(a)

- Intake worker has 20 days

— To close case, or

— To enter into an informal disposition/deferred prosecution agreement

§ 48.315
§ 938.315

— Time period may only be extended by Ct for good cause

§ 48.25(2)
§ 938.25(2)(a)

2) Prosecutor must, within 20 days after date intake request filed,

a. File petition, or

b. Close case, or

c. In Ch 48 cases, refer case back to intake worker

d. In Ch 938 cases, refer case back to intake worker or law enforcement with notice to intake worker

§ 938.25(2g)

e. If Indian Juv subject to Tribal Ct order commits off-reservation delinquent act, and if intake worker or prosecutor received notification from tribal official, then see consultation requirements in § 938.25(2g)

Shawn BN v St
(In Int of Shawn BN)
173 Wis. 2d 343
(CA 1992)

3) If DA has sufficient facts to support more than one charge, all charges must be included in original petition

4) If further investigation necessary

§ 48.25(2)
§ 938.25(2)(a)

a. Intake or law enforcement agency has 20 days after referral to complete investigation

§ 48.315
§ 938.315

b. 20-day time period may be extended only by Ct for good cause

§ 48.25(2)
§ 938.25(2)(a)

5) When referral back to intake or law enforcement and further investigation is completed

a. Case may again be referred for formal Ct action

b. Case must be considered by prosecutor as new referral

§ 938.24(4), (5m)

F. Intake worker may close case with notice to known victims

§ 48.25
§ 938.24(5)
§ 938.25(2)(b)

1) Prosecutor may initiate delinquency, CHIPS, UCHIPS, or JIPS petition within 20 days after notice, regardless of intake worker's decision to close case

§ 48.23, § 938.23

2. Right to Counsel, GAL, or Interpreter

A. In ICWA cases, see mandatory and discretionary appointment of counsel in JV 17, Sec. 2

B. At any time, upon request or own motion, Ct may appoint

§ 48.235(1)
§ 938.235(1)(a)

1) GAL for child/Juv or any party

§ 48.235(1)(f)

a. Appointment of GAL mandated for unborn child (UC) in UCHIPS

§ 48.235(1)(g)

b. Appointment of GAL mandated for parent in TPR if found incompetent by any exam under § 48.295

§ 48.23(3), (5)
§ 938.23(3), (5)

2) Counsel for child/Juv unless child/Juv wishes to retain counsel of own choosing at own expense

3) Counsel for adult parent in CHIPS proceedings, unless parent wishes to retain counsel of own choosing

§ 48.233

a. SPD will not represent parents in such cases unless in pilot counties

Joni B v St
202 Wis. 2d 1 (1996)
St v Tammy LD
(In Int of Xena X D-C)
2000 WI App 200
238 Wis. 2d 516

b. Upon request, or when there is reasonable concern about parents' ability to proceed pro se, Ct must consider appointment of counsel under *Joni B*

§ 938.23(3)

4) In delinquency actions, Ct may appoint counsel for any party

§ 938.23(3)

5) Statutes prohibit appointment of counsel for parents in JIPS proceeding (except as provided in § 938.23(2g) in ICWA cases)

C. Child/Juv has right to counsel IF

§ 48.23(1m)(a)
§ 938.23(1m)(a)

1) Alleged delinquent or child/Juv in secure custody

a. Counsel required at all stages of proceedings

b. Counsel may be waived if child/Juv age 15 or older and potential does not exist for waiver to Adult Ct or disposition to Juvenile correctional facility, secured RCCCY, or SJO program

- Must be knowingly and voluntarily made
- Ct need not accept waiver

St v Jones
192 Wis. 2d 78 (1995)
St v Woods
117 Wis. 2d 701 (1984)

c. Temporary custody orders by intake or custodial interrogations by law enforcement are not "proceedings" requiring appointment of counsel, unless Juv so requests. First proceeding at which Juv entitled to counsel is a Ct hearing under § 938.21

§ 48.23(1m)(b)
§ 938.23(1m)(b)
§ 48.235, 938.235

2) Alleged CHIPS or JIPS

a. Counsel, or GAL if child/Juv under 12, may be appointed in any case at discretion of Ct

b. Counsel and GAL required if child may be placed out-of-home, except only GAL required if CHIPS or JIPS under 12

c. Counsel and GAL required at hearing on out-of-home placement even if petition not contested, except only GAL required if CHIPS or JIPS under 12

d. Counsel may be waived if child/Juv age 15 or older and out-of-home placement not an issue

- Must be knowingly and voluntarily made
- Ct need not accept waiver

§ 48.23(3m)

e. In Ch 48 actions, counsel required if abuse, neglect, or emotional damage alleged. GAL may be appointed if child under 12

§ 48.23(1m)(c), § 48.14(5)

3) Alleged Ch 51 or 55 child

a. Counsel required

b. Ct may not accept waiver of counsel

§ 48.23(2m)

4) CEM in UCHIPS

a. Counsel required

b. Ct may not accept waiver of counsel

c. Ct may appoint GAL instead of counsel if CEM under 12

§ 48.235(1)(c)

5) Child subject of TPR proceeding, guardianship under § 48.977, standby guardian proceeding under § 48.978, guardianship of the person for a child under § 48.9795, or contested adoption

a. GAL required

§ 48.375(7)(a)1.

6) Child subject to jurisdiction of Ct under Ch 48.375 and who is required to appear in Ct

a. Counsel required

Recommendation

- The committee believes that if child is required to be in Ct, counsel may not be waived

§ 48.375(7)(am)
§ 48.235(1)(d)

b. GAL for pregnant minor may also be appointed in Ct's discretion

c. See **JV 15** for discussion of waiver of parental consent

§ 48.23(4)
§ 938.23(4)

7) If it appears child/Juv/minor parent has right to counsel and that right is not waived:

a. Refer child/Juv/minor parent to SPD for appointment of counsel without determination of indigency

§ 48.235(1)
§ 938.235(1)

b. Ct may appoint GAL in any appropriate matter

§ 48.275(2)
§ 938.275
RMC Form JD-1762

c. Parent or guardian may be ordered to reimburse State or Cty for all or part of child's/Juv's legal fees upon completion of proceedings or when State or Cty no longer providing child/Juv with legal counsel in the proceeding, unless

- Parent is victim or petitioner in action, or
- Ct finds interests of parent and child/Juv substantially and directly adverse, and reimbursement would be unfair to parent

§ 48.23(4)

- In § 813.122 or § 813.125 action, when parent or guardian is petitioner and child is respondent

8) For child's/Juv's right to counsel in postdisposition proceedings, see **JV 11**

§ 48.23(2m)(b)

D. Adult expectant mother (AEM) right to counsel

1) In ICWA cases, see mandatory and discretionary appointment of counsel in **JV 17, Sec. 2**

2) Counsel required if AEM to be placed outside the home

a. May waive counsel if knowing and voluntary

§ 48.23(4)

b. If AEM unable to afford counsel, refer to SPD for indigency determination

c. AEM may be ordered to reimburse State or Cty for all or part of AEM's legal fees upon completion of proceedings or when State or Cty no longer providing AEM with legal counsel in the proceeding, unless

§ 48.275(2)

- Parent is victim or petitioner in action, or
- Ct finds interests of parent and child substantially and directly adverse, and reimbursement would be unfair to parent

E. Parents' and other parties' right to counsel

§ 48.23(2)

1) Parent age 17 or younger

a. Counsel required if child subject of contested adoption or involuntary TPR

- Counsel may not be waived

b. GAL required if minor parent petitioning for voluntary TPR

§ 48.23(2)

2) Parent age 18 or older

a. Counsel required if contested adoption or involuntary TPR

- May waive counsel if knowing and voluntary

§ 938.23(3)

b. Statute prohibits appointment of counsel for parents or any party other than Juv in JIPS proceeding (except as provided in § 938.23(2g) in ICWA cases)

Joni B v St
202 Wis. 2d 1 (1996)

St v Tammy LD
(In Int of Xena X D-C)
2000 WI App 200
238 Wis. 2d 516

c. Upon request, or when there is reasonable concern about parents' ability to proceed pro se, Ct must consider appointment of counsel under *Joni B*

§ 938.23(3), (4)

d. Ct may provide counsel at Ct's discretion in delinquency cases

§ 48.23(5)
§ 938.23(5)

e. Parent or other party may retain counsel of choice at own expense

§ 48.235(1)(a)
§ 938.235(1)(a)

f. Ct may appoint GAL in any appropriate matter

§ 48.23(4)
§ 938.23(4)

3) When counsel for parent/other person required and it appears parent/other person cannot afford counsel or so indicates

a. Ct must refer to SPD for indigency determination and appointment where permitted

§ 48.235
§ 938.235

F. GAL duties

§ 48.235(3)(a)
§ 938.235(3)(a)

1) Advocate for best interests of person or UC for whom appointment made

§ 48.235(3)(b)
§ 938.235(3)(b)

a. Unless granted leave by Ct not to do so, GAL *shall* personally or through trained designee

- Meet with child/Juv/EM, and
- Assess appropriateness and safety of Juv's/ (unborn) child's environment, and
- If child/Juv old enough to communicate, interview child/Juv and determine goals and concerns regarding placement

b. Make clear and specific recommendations to Ct concerning best interest of (unborn) child/Juv at every stage of proceedings

RMC Form JD-1799

c. File RMC Form JD-1799 (statement of GAL) if Ct requests

§ 48.235(3)(a)
§ 938.235(3)(a)

2) If best interests of child/Juv and child's/Juv's wishes are "substantially inconsistent," GAL must inform Ct so Ct can decide whether to appoint adversary counsel

§ 48.235(4), (4m)
§ 938.235(4)

3) If GAL reappointed or extended in CHIPS, UCHIPS, or JIPS case, GAL *may*

a. Participate in permanency planning

b. Petition for change of placement (for UC, after child born)

c. Petition for TPR

d. Petition for revision of disposition

e. Petition for extension of dispositional order

f. Petition for child abuse or harassment TRO and injunction (for UC, after child born)

g. Petition for relief from TPR judgment (for UC, after child born)

§ 48.235(7), § 938.235(7)

h. Participate in an appeal

§ 48.375(7)(am)

i. Petition for waiver of parental consent for abortion

§ 48.235(4)(a)7g.
§ 938.235(4)(a)7g.

j. Petition for appointment, revision, or removal of guardian under § 48.977 (for UC, after child born)

§ 48.235(4)(a)7m.
§ 938.235(4)(a)7m.

k. Initiate action to establish child's/Juv's paternity

§ 48.235(4m)(a)3m.
§ 48.14(5)

l. GAL of UC may petition for commitment of EM under Ch 51

m. Perform any other duties consistent with Ch 48 and Ch 938

§ 48.235(5m)

4) GAL appointed for incompetent parent, in TPR proceeding for child who was found CHIPS, has special reporting duties and obligations to assist parent, but no trial rights

5) For GAL appointed in proceeding for guardianship of the person for a child, see § 48.9795(3)

§ 885.38

G. Right to Interpreter—see Wis. Judicial Benchbook, Vol. I, Criminal & Traffic, CR 2, Interpreters

3. Informal Disposition [CHIPS], [UCHIPS], Deferred Prosecution [JIPS/Delinquent]

§ 48.245(2)(b)
§ 938.245(2)(b)
§ 48.24(4), § 938.24(4)

A. Intake worker may enter informal disposition/deferred prosecution agreement, but it may not exceed 6 months for Ch 48 or 1 year for Ch 938 or include any form of out-of-home placement

§ 48.245(1)
§ 938.245(1)

1) Intake worker, child/Juv, parent, guardian, and legal custodian must agree; and AEM and GAL for UC must agree if jurisdiction under § 48.133

§ 48.245(4)

a. Inform child (if age 12 or older) and parent, guardian, or legal custodian, in writing, of their right to terminate informal disposition at any time or object at any time to the fact or terms of informal disposition. If there is an objection, intake worker may alter the agreement, terminate the agreement, or ask DA or Corp Counsel to file petition in Circuit Ct

§ 48.245(3)
§ 938.245(3)

2) Must be in writing and include obligations imposed and effective date, and copy of written agreement must be given to child/Juv, parent, etc.

a. Written agreement must state whether child has been adopted

§ 938.24(5)
§ 938.245(1m)

3) In delinquency or § 938.13(12) proceeding, intake worker must offer victims who so request opportunity to confer with intake worker regarding deferred prosecution

B. Termination of informal dispositions/deferred prosecution agreement entered by intake worker *without* Ct order

§ 48.245(5)
§ 938.245(5)

1) Upon request of any individual specified in **Sec. 3.A.**1) above, including GAL for UC

§ 48.245(5m)
§ 938.245(6)
§ 48.25(2)
§ 938.25(2)(b)

2) Upon filing of petition by DA within 20 days after receipt of notice of informal disposition/deferred prosecution

a. Statements made to intake worker are inadmissible under § 938.245(6), but admissible under § 48.245(5m)

§ 48.245(7)
§ 938.245(7)

3) If intake worker determines that obligations imposed under informal disposition/deferred prosecution are not being met

a. Intake worker may cancel informal disposition/deferred prosecution

- Must notify prosecutor of cancellation within 10 days

- Must recommend if petition should be filed or not

b. Prosecutor may initiate delinquency petition within 20 days regardless of intake worker's recommendation

§ 48.245(7)
§ 938.245(7)(a)

- Ct shall grant appropriate relief under § 48.315(3) or § 938.315(3) if petition not filed within time periods. Failure to object to untimely filing waives objection to Ct's competency to act

§ 48.245(8)
§ 938.245(8)

4) If obligations imposed under informal disposition/ deferred prosecution are met at expiration of effective date

a. Intake worker, in writing, must inform parties specified in **3.A.**1) above

b. No petition may be filed or citation issued on allegations that brought about informal disposition/deferred prosecution

c. Allegations that brought about informal disposition/deferred prosecution may not be sole basis for any petition under §§ 48.13–48.14 or § 938.13 or § 938.14

St v Lindsey AF
(In Int of Lindsey AF)
2003 WI 63
262 Wis. 2d 200

5) Judge may dismiss petition and refer matter for deferred prosecution agreement without consent of DA

a. DA not authorized to terminate *Ct-ordered* deferred prosecution agreement under § 938.21(7)

4. Petition

DWB v St
(In Int of DWB)
158 Wis. 2d 398 (1990)

A. Juv proceeding is commenced by filing of petition

§ 48.24(5), § 48.25(2)
§ 48.315(3)
§ 938.24(5), § 938.315(3)

1) If petition not filed within 60-day time period (under Ch 48) or 40-day time period (under Ch 938):

a. Ct shall grant appropriate relief under § 48.315(3)/§ 938.315(3)

b. Failure to object to untimely filing waives objection to Ct's competency to act

St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563

2) Ct or jury must make determination of facts as to grounds as of date petition was filed or as of date of child/Juv's removal from home, not date of hearing

§ 48.25, § 938.25

B. Who may file petitions

§ 938.12

1) Delinquency/JIPS [§ 938.13(12)] proceedings

§ 938.09(1), (5)

a. DA and Corp Counsel, if authorized, must prepare, sign, and file delinquency petition

§ 938.265

b. Prosecutor must offer victims opportunity to confer before plea hearing

§ 48.13, § 48.133
§ 938.13

2) CHIPS, UCHIPS, or JIPS proceedings

§ 48.09(5), § 938.09(5)
§ 48.25(1), § 938.25(1)

a. DA or Corp Counsel or other appropriate official may file petition

§ 48.25(1)
§ 938.25(1)

b. Counsel or GAL for parent, EM, relative, guardian, or (unborn) child/Juv may file petition

§ 48.13(4)
§ 938.13(4)

c. Parent or guardian must sign petition that alleges inability or need of assistance

- To care for child, or
- To control Juv, or
- To provide necessary special treatment or care for child (See **JV 1**, Children's Code, **Sec. 2.**, for definition of special treatment or care)

§ 938.13(7)

d. Parent, Juv, guardian, or relative in whose home child resides must sign petition that alleges

- Juv is habitually truant from home, and
- Reconciliation efforts have failed

§ 48.25(6)
§ 938.25(6)

e. In a CHIPS or JIPS proceeding, any party to or any governmental agency involved in the proceeding may petition the Ct for a child/Juv abuse or harassment TRO/injunction

- Ct shall follow procedures under §§ 813.122 and 813.125 but may combine hearing with Ch 48 and Ch 938 proceeding

§ 48.13(9)

f. Child must sign petition that alleges

- Parent, guardian, or legal custodian unwilling, neglecting, unable, or needs assistance to provide needed special treatment or care, and
- Child is 12 or older

§ 48.25(1)
§ 938.25(1)

g. Any CHIPS, UCHIPS, or JIPS petition must be signed by person

- Who has knowledge of facts alleged, or
- Who is informed of facts alleged and believes facts to be true

§ 938.125

3) Civil law violations

§ 938.09(2)

a. DA or Corp Counsel must file petition

§ 938.25(1)

b. Petition must also be signed by person

- Who has knowledge of facts alleged, or
- Who is informed of facts alleged and believes facts to be true

§ 938.125

4) Ordinance violations

§ 938.09(3)

a. If city, village, or town ordinance violated, city, village, or town Atty must file petition

§ 938.09(4)

b. If Cty ordinance violated, appropriate official designated by Cty Bd must file petition

§ 938.25(1)

c. Petition must also be signed by person

- Who has knowledge of facts alleged, or
- Who is informed of facts alleged and believes facts to be true

§ 938.17(2), § 938.25(5)

5) Citations issued for civil law or ordinance violations

a. Citation may serve as the initial pleading

b. Citation is sufficient to confer Ct with jurisdiction over Juv when filed in Ct

§ 48.14, § 938.14

6) Miscellaneous proceedings

§ 48.09(6), § 48.25(1)
§ 938.25(1)

a. DA, Corp Counsel, or other appropriate official designated by Ct in manner specified by Ct may file petition

§ 48.25(1), § 938.25(1)

b. Counsel or GAL for child/Juv, parent, guardian, or relative of child may file petition

c. Petition must be signed by person

- Who has knowledge of facts alleged, or
- Who is informed of facts alleged and believes facts to be true

§ 48.25(3), § 938.25(3)

7) If appropriate official refuses to file petition

a. Ct may order filing of petition on request of any person or on own motion

- Ct must hold hearing on request
- Case may not be heard by Ct that ordered petition filed

§ 938.25(2m)

b. Prosecutor must make reasonable effort to notify known victims of decision in delinquency [§ 938.12] and JIPS [§ 938.13(12)] cases

§ 48.25(2), § 938.25(2)(a)

c. Intake worker has 20 days

- To close case, OR
- To enter informal disposition/deferred prosecution agreement

§ 48.315
§ 938.315

- Time period may only be extended by Ct for good cause

§ 48.25(2), § 938.25(2)(a)

- Failure to object to untimely filing waives objection to Ct's competency to act

C. For time periods for filing petition see JV 3

D. Required contents of petition

§ 48.255(1)(a)
§ 938.255(1)(a)

1) Name, birth date, and address of child/Juv and whether child/Juv has been adopted

§ 48.255(1)(b)
§ 938.255(1)(b)

2) Names and addresses of child's/Juv's parent, guardian, legal custodian or spouse, except

a. Name and address of child's/Juv's nearest relative when parent, guardian, legal custodian, or spouse cannot be identified, or

§ 48.255(5)

b. These requirements do not apply to petitions initiated under § 48.375(7) (waiver of parental consent to abortion)

§ 938.255(1)(cr)

3) In delinquency and § 938.13(12) JIPS cases, additional statements are required if Indian Juv, subject to Tribal Ct order, involved

§ 48.255(1m)

4) Petitions under § 48.133 must also contain

a. Estimated gestational age

b. Name, birth date, and address of EM

c. Name and addresses of parent, guardian, legal custodian, or spouse, if any, if CEM

d. Name and address of spouse of AEM if applicable, or of nearest relative if no identifiable spouse

§ 48.027
§ 48.255(1), (cg), (cm), (1m)(d)
§ 938.255(1)(cg), (cm)
David S v Laura S (In Int of Brandon SS)
179 Wis. 2d 114 (1993)

5) All petitions in custody proceedings, including UCHIPS, must contain information required by UCCJEA, including the information required under § 822.29(1), and state whether child/Juv/UC may be subject to ICWA. If child/Juv/UC may be subject to ICWA, see para. 8) below

§ 48.255(1)(c), (1m)(c)
§ 938.255(1)(c)

6) If child/Juv or EM in custody

a. Time taken into custody

b. Place being held, except

- When reasonable cause to believe that such disclosure would result in imminent danger to child/Juv/EM/UC, or physical custodian

§ 48.255(1)(f), (1m)(f)
§ 938.255(1)(f)

7) If child/Juv/CEM held in custody outside home

a. Reliable and credible information showing that continued placement of child/Juv/CEM in home would be contrary to welfare of child/Juv/CEM, **and**

b. Unless reasonable efforts not required, reliable and credible information showing that person who took child/Juv/CEM into custody and intake worker have made reasonable efforts to

- Prevent removal of child/Juv/CEM from home, while assuring that child/Juv/CEM health and safety are paramount concerns, **and**

- Make it possible for child/Juv/CEM to return safely home

8) ICWA Cases

§ 48.255(1)(cm), (1m)(d)
§ 938.255(1)(cm)

a. Whether child/UC/Juv may be subject to federal ICWA and, if so, names and addresses of child's/UC's/Juv's Indian custodian, if any, and Indian tribe (eligible Indian tribe for UC), if known

§ 48.255(1)(g), (1m)(g)
§ 938.255(1)(g)

b. If petitioner knows or has reason to know child/EM/Juv is Indian child/Juv and if child/CEM/Juv has been removed from home of Indian child's/CEM's/ Juv's parent/Indian custodian, include specific, reliable, and credible information showing continued custody with parent/Indian custodian is likely to result in serious emotional or physical damage to child/CEM/Juv under § 48.028(4)(d)1./§ 938.028(4)(d)1. and that active efforts under § 48.028(4)(d)2./§ 938.028(4)(d)2. have been made to prevent breakup of Indian child's/Juv's family and those efforts have proved unsuccessful

c. For Ch 938 ICWA petition alleging delinquency, petition must state whether, at the time of the alleged delinquent act:

§ 938.255(1)(cr)1.b.

- Juv was under an order of a tribal Ct, other than relating to adoption, physical placement, or visitation with Juv's parent, or permanent guardianship

§ 938.255(1)(cr)1.c.

- Juv was physically outside boundaries of the reservation of the Indian tribe of the tribal Ct and any off-reservation trust land of either the Indian tribe or a member of that Indian tribe as a direct consequence of an order under § 938.255(1)(cr)1.b., including an order placing Juv in home of a relative who on or after the date of the tribal Ct order resides physically outside the boundaries of a reservation and off-reservation trust land

§ 938.255(1)(cr)2.

Note: If petition includes statement that Indian Juv is under an order of a tribal Ct, and if the intake worker, DA, or Corp Counsel has been notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed with the tribal Ct, then petition must include statement to that effect.

§ 48.255(2)
§ 938.255(2)

9) If petitioner does not know or cannot ascertain information specified in paras. 1)–8) above, petition must so state

10) Probable cause for law violation

§ 938.255(1)(d), § 938.12
§ 938.125, § 938.13(12)

a. If Juv alleged to have violated a criminal statute, an ordinance or another law, petition must contain

- Citation to appropriate law or ordinance

- Facts sufficient to establish probable cause that offense committed, and Juv named committed it

§ 938.255(3)

b. If petition does not contain citation to law or ordinance, or does not contain sufficient facts to establish probable cause, petition must be

- Dismissed, or

§ 938.263(2)

- Amended

§ 48.255(1)(e), (1m)(e)
§ 938.255(1)(e)
§ 48.13, § 48.133, § 938.13
§ 48.14, § 938.14

11) CHIPS, UCHIPS, or JIPS petitions and miscellaneous petitions must contain

a. Reliable and credible information that

- Forms basis of allegations necessary to invoke Ct's jurisdiction

- Provides reasonable notice of conduct or circumstances to be considered by Ct

§ 48.24(5)

- In CHIPS/UCHIPS petition, information was received within 60 days before petition filed

b. Statement that child/Juv/EM is in need of supervision, services, care, or rehabilitation and UC is in need of protection or care

St v Courtney E
(In Int of Courtney E)
184 Wis. 2d 592 (1994)

- Petition that fails to allege protection or services that can be ordered by the Ct to address child's needs is insufficient

§ 48.255(3)
§ 938.255(3)

c. If statement of jurisdictional facts not included or insufficient, petition must be

- Dismissed, or

§ 48.263(2), § 938.263(2)

- Amended

§ 48.255(5)

d. See **JV 15** for requirements of petitions for waiver of parental consent to abortion

E. Amendment of petition

§ 48.263(2), § 938.263(2)

1) Before taking of plea at plea hearing

a. Petition may be amended upon discretion of Ct or person who filed petition

b. Reasonable notice of amendment must be given to interested parties

§ 938.263(2)

2) After taking of plea at plea hearing

a. If Juv alleged delinquent or JIPS, Ct may allow amendment, provided

- Petition amended to conform to proof, and
- Amendment not prejudicial to Juv

§ 48.263(2)

b. If CHIPS/UCHIPS petition, Ct may allow amendment, provided

- Any objecting party allowed continuance for reasonable time

5. Notice, Summons

A. For ICWA cases, see JV 17

§ 48.27(1), § 938.27(1)
§ 938.12, § 938.125
§ 48.13, § 48.133
§ 938.13

B. Delinquency proceedings, civil law or ordinance-violation proceedings, JIPS, CHIPS, or UCHIPS proceedings

1) Ct must

§ 48.27(3), § 938.27(3)

a. Notify child/Juv

b. Notify any parent, guardian and legal custodian, any foster parent or other physical custodian who is a guardian or relative of child/Juv, UC's GAL, and CASA

§ 48.27(3)(a)1m.
§ 938.27(3)(a)1m.

- Foster parents or other physical custodians under § 48.62(2) are not parties, but have right to submit written statement before hearing or make oral or written statement at hearing

§ 48.27(3)(a)2.
§ 938.27(3)(a)2.

- Failure to give notice to foster parent or other physical custodian under § 48.62(2) not a jurisdictional defect; remedy is rehearing

§ 48.27(3)(c), (d)

c. If petition under § 48.133 and AEM, notify GAL for UC, EM, any physical custodian of EM, applicable authority under ICWA if child will be under ICWA

- Note: Legislature omits mention of notice to person alleged to be or adjudicated father of UC in § 48.133 proceeding involving AEM or to spouse of EM

§ 48.27(3)(d)
§ 938.27(3)(d)

d. Notify Indian custodian of child/Juv or Indian custodian and tribe with which UC, when born, may be eligible for affiliation and tribe or Indian custodian may intervene at any time

§ 48.27(5)
§ 938.27(5)

e. Make every reasonable effort to identify and notify any person who has filed a declaration of paternal interest, any person conclusively determined to be the child's father by genetic tests under § 767.804(1), any person who has acknowledged paternity under § 767.805(1), AND adjudged father of child/Juv, unless person's parental rights terminated

§ 48.27(3)(b)1.a., b.
§ 938.27(3)(b)1.a, b.

f. If petition under § 48.13 or § 48.133 with CEM, and nonmarital child not subsequently adopted, parents do not intermarry, or paternity not established, notify person alleged to Ct to be father or who may, based on statements of the mother or other information presented to Ct, be father of child/Juv, or who has filed a declaration of paternal interest under § 48.025

Sheboygan Cty DHS v Neal JG (In re TPR to Arianna RG)
2003 WI 11
259 Wis. 2d 563

g. See **JV 17, Sec. 1.C.**, for ICWA notification. Duty to notify tribe under ICWA arises when "Ct knows or has reason to know" child may be an Indian child. However, "vague" and "sketchy" assertions that child may be Indian child are not sufficient to raise notice requirement

Recommendation

- Cts should pursue reasonable avenue of inquiry when issue of Indian heritage is raised including notifying the BIA

§ 48.27(3)(b)2.
§ 938.27(3)(b)2.

h. Need not notify person who may be father if child/Juv conceived as a result of sexual assault and physician corroborates that sexual assault occurred and may have resulted in conception

§ 48.27(3)(e)

i. CASA, in CHIPS case. For manner of notice, see § 48.27(3)(e)

2) Applicability of notice requirements

§ 48.27(3)(a)
§ 938.27(3)(a)

a. Notice required for all hearings regarding child/Juv, except

b. Notice not required when Ct to hear motion for which notice must be provided only to child/Juv/EM and his/her Atty

§ 938.273(1)
St v Aufderhaar
2005 WI 108
283 Wis. 2d 336

c. If personal service is not accomplished and parties do not appear or otherwise acknowledge service, continuance shall be granted and service must be made personally. Certified mail to last-known address, if Ct deems personal service impracticable, also suffices. It is not sufficient to issue capias or to rely on actual knowledge or regular mail alone

- Service is presumed when mail service is allowed, accomplished, and not returned

§ 48.27(4), § 938.27(4)

3) Contents of notice

§ 48.27(4)(a)1., (b)1.
§ 938.27(4)(a)

a. Name of child/Juv/EM

b. Description of hearing, including

- Nature
- Location
- Date
- Time

§ 48.27(4)(a)2., (b)2.
§ 938.27(4)(b)
§ 48.23, § 938.23

c. Advice to child/Juv/EM/and any party of right to legal counsel regardless of ability to pay

§ 48.27(8), § 938.27(8)
§ 48.275(2), § 938.275(2)

d. Written notice that parent or guardian may be ordered to pay for legal counsel provided to child/Juv named in delinquency, JIPS, CHIPS, or UCHIPS petition

§ 48.27(3), § 938.27(3)

4) Copy of petition should be attached to first written notice to any interested party

5) Ct may issue summons to

§ 48.27(1)(a), § 938.27(1)

a. Legal custodian

b. Child/Juv

§ 48.27(1)(b)

c. AEM

§ 48.27(2), § 938.27(2)

d. Other interested persons Ct finds necessary

§ 48.27(3)(a)
§ 938.27(3)(a)

6) Notice of hearings after initial hearing may be by telephone, 72 hours in advance of hearing. Person providing phone notice must file signed statement in record indicating to whom and when phone notice provided

§ 938.27(4m)
§ 938.346

7) In delinquency/JIPS, ordinance or civil law violation proceeding, prosecutor to make reasonable attempt to contact any known victim or alleged victim of a Juv's acts and any known family member of a homicide victim or alleged homicide victim to inform them of their right to receive notice of any hearing under Ch 938

a. If notice requested, prosecutor must provide regular mail notice to such individuals

b. Failure to comply with § 938.27(4m) victim-notice requirements is not ground for appeal or reversal

Wis. Const. art. I, § 9m
(Marsy's Law)

- See **JV 12** for victims' rights provisions

§ 48.27(6), § 938.27(6)
§ 48.14, § 938.14

C. Sec. 48.14/Sec. 938.14 proceedings

1) All interested parties must receive notice

2) Summons to be issued in manner specified by Ct

D. For notice/summons provisions regarding TPR, see JV 13

§ 938.27(7)
§ 938.17(2)(a)3.–(cg)

E. Ordinance citations issued if parent, guardian, legal custodian already notified of citation

1) Service of notice or summons not required

2) Written advice of right to counsel not required

§ 48.375
§ 48.273(4)

F. Waiver of parental consent to abortion

1) Service of summons not required

§ 48.375(7)

2) Notify minor, minor's counsel, clergy, or GAL of date, time, and place of hearing

3) See **JV 15** for procedure

§ 48.273, § 938.273

G. Service of notice or summons

1) For ICWA cases, see **JV 17**

§ 48.273(1), § 938.273(1)

2) Notice or summons may be served by mail

§ 938.273(1)
State v. Aufderhaar
2005 WI 108
283 Wis. 2d 336

a. In delinquency case, service of summons by regular mail to last-known address in State or service of notice of hearing and waiver petition to address in State where Juv known to have moved does not satisfy service or due-process requirements, even if actual notice or constructive notice shown. Also, issuing capias insufficient for personal jurisdiction to attach

- Note: Language in § 48.273 is substantially identical to § 938.273.

MLS v St (In Int of MLS)
157 Wis. 2d 26 (CA 1990)

b. If Juv is tribal member and is alleged to have committed delinquent act off reservation, State may obtain personal jurisdiction pursuant to State statute re: service of process

3) If person fails to appear at hearing or otherwise to acknowledge service

a. Ct must grant continuance, unless personal service impracticable

- May order service by certified mail to last-known address

b. If child/Juv in secure custody

- Ct may refuse to grant continuance and then must order personal service or certified mailing of notice for next hearing

4) Time periods

a. For ICWA cases see **JV 17**

§ 48.273(1), § 938.273(1)

b. Personal service at least 72 hours before hearing

c. Mail at least 7 days before hearing if person in-state

Recommendation
§ 801.15

- Mail 10 days before hearing because Saturdays, Sundays, and holidays excluded

- Service by email or fax may be valid under § 801.14(2)

§ 48.273(1)
§ 938.273(1)

d. Mail at least 14 days before hearing if CHIPS/JIPS petition to person out of state

§ 48.273(2)
§ 938.273(2)

5) Ct may direct required service by any suitable person

§ 48.273(3), § 938.273(3)
Ch 885

6) Expenses of service or publication and traveling expenses and fees as allowed by statute

§ 938.12, § 938.125
§ 48.13, § 938.13
§ 48.14, § 938.14
§ 48.133, § 48.135

a. Delinquent, civil law or ordinance, CHIPS, UCHIPS, JIPS, or miscellaneous cases are charged to Cty if approved by Ct

§ 48.28, § 938.28

H. Failure to obey summons

Ch 785

1) Any person summoned who fails to appear without reasonable cause

a. May be proceeded against for contempt of Ct

§ 48.28
§ 938.28

2) Capias may be issued for parent, guardian, or child/Juv, but not AEM, if

a. Summons cannot be served, or

b. Party served fails to obey summons, or

c. It appears to Ct that service will be ineffectual

St v Jermaine TJ
(In Int of Jermaine TJ)
181 Wis. 2d 82 (CA 1993)

- Finding must be made on record

§ 48.28
§ 48.19–.236

3) Children's Code governs taking and holding of child or EM in custody

§ 938.28
§ 938.19–.237

4) Juv Justice Code governs taking and holding of Juv in custody

§ 757.69(1)(g)

6. Role of Circuit Court Commissioners (CCCs)

§ 757.68(3m)

A. Cty Bd of Supervisors may establish one or more CCC positions to assist in matters affecting children/Juvs

1) May be full- or part-time

2) Assists in matters affecting Juvs

3) Serves at discretion of Chief Judge

B. Powers of Comm'rs

Note: 2005 Wis Act 344 and 2007 Wis Act 199 changed language from "Judge" to "Ct" in the following places. The Benchbook Committee interprets this to mean that the CCC can exercise powers where this change has been made unless expressly prohibited by § 757.69

1) § 938.19—taking Juv into custody

2) § 938.208—issuing protective orders placing Juv in secure custody; holding runaway; and allowing 24-hour extensions of secure custody orders for runaways. Also, see § 938.21 (hearing for Juv in custody)

3) § 938.209—holding Juv in Cty jail

4) § 938.24(4)—dismissing case if case filed and intake worker wants to convert it to deferred prosecution agreement

5) § 938.25—order filing a delinquency petition if DA refuses

6) Issuing a capias appears to be granted under amended § 938.19 language for taking Juv into custody

7) § 938.299(1)—who may attend hearings

§ 938.21

8) § 938.19—custody hearings when custody taken under § 938.19 and child not released under § 938.20

See § 48.315(3), § 48.245

9) § 48.25(2)—dismiss Ch 48 petition and proceed to informal disposition

§ 757.69(1)(g)

C. CCC may, if authorized by a Judge

1) Issue summonses and warrants

2) Conduct custody hearings and order child/Juv/EM held or released

3) Conduct detention and shelter care hearings

4) Conduct preliminary appearances

5) Conduct plea hearings

6) Enter into consent decrees or amended consent decrees

7) Issue orders requiring compliance with deferred prosecution agreements

8) Conduct prehearing conferences

9) Conduct all proceedings on civil law or ordinance petitions or citations

10) Conduct uncontested proceedings, including making dispositions, in delinquency, JIPS, CHIPS, UCHIPS, and § 48.9795 matters

a. Includes uncontested waiver hearings

§ 757.69(1m)(g)

b. Includes out-of-home placements but not correctional placement or placement in Type 2 RCCCY or SJO program

§ 757.69(1)(g)7., (j)
§ 813.122

11) Hold hearings, make findings, and issue TROs in child abuse injunction proceedings in which respondent is a child

Comment

a. CCCs apparently cannot issue child abuse injunctions

§ 757.69(1)(g)7., (m)
§ 813.125

12) Hold hearings, make findings, and issue orders in harassment injunction proceedings in which respondent is a child

Comment

a. CCCs apparently can issue harassment injunctions

§ 48.38(5), (5m)
§ 938.38(5), (5m)

13) Conduct permanency reviews and hearings

14) Conduct emergency change-in-placement hearings

§ 757.69(1m)

D. CCC may NOT

1) Conduct contested waiver hearings

2) Conduct contested fact-finding or dispositional hearings EXCEPT in civil law or ordinance petitions or citations and as in **Sec. 6.C.**10) above

3) Make dispositions other than approving consent decrees and ordering compliance with a deferred prosecution agreement, and other than dispositions in uncontested proceedings under §§ 938.12, 48.13, 48.133, or 938.13 (but not correctional placements or placements in Type 2 RCCCY or SJO program)

4) Conduct TPR or adoption hearings or conduct gdnship proceedings under § 48.977 or § 48.978, or Juv admission or order under § 51.13(4)

5) Make changes in placement of children/Juvs/EMs, except

§ 48.19, § 938.19
§ 48.205, § 938.205
§ 48.21, § 938.21

a. If emergency custody taken and custody hearing held, may make temporary change in placement of child/Juv/EM

§ 757.69(1m)(g)

b. In uncontested proceedings under §§ 938.12, 48.13, 48.133, and 938.13, but may not place in corrections, Type 2 RCCCY, or SJO program

6) Revise or extend dispositional orders, except

a. In civil law or ordinance petitions or citations

b. In uncontested proceedings under §§ 938.12, 48.13, 48.133, and 938.13

c. As permitted under § 757.69(1)(g)6., 8., 9., and 15.

§ 757.69(8)

E. Decisions of CCC reviewed by Juv Ct Judge upon request of any interested party. Any decision, order, or ruling by CCC may be certified to branch of Ct to which case has been assigned, upon motion of any party for hearing

de novo

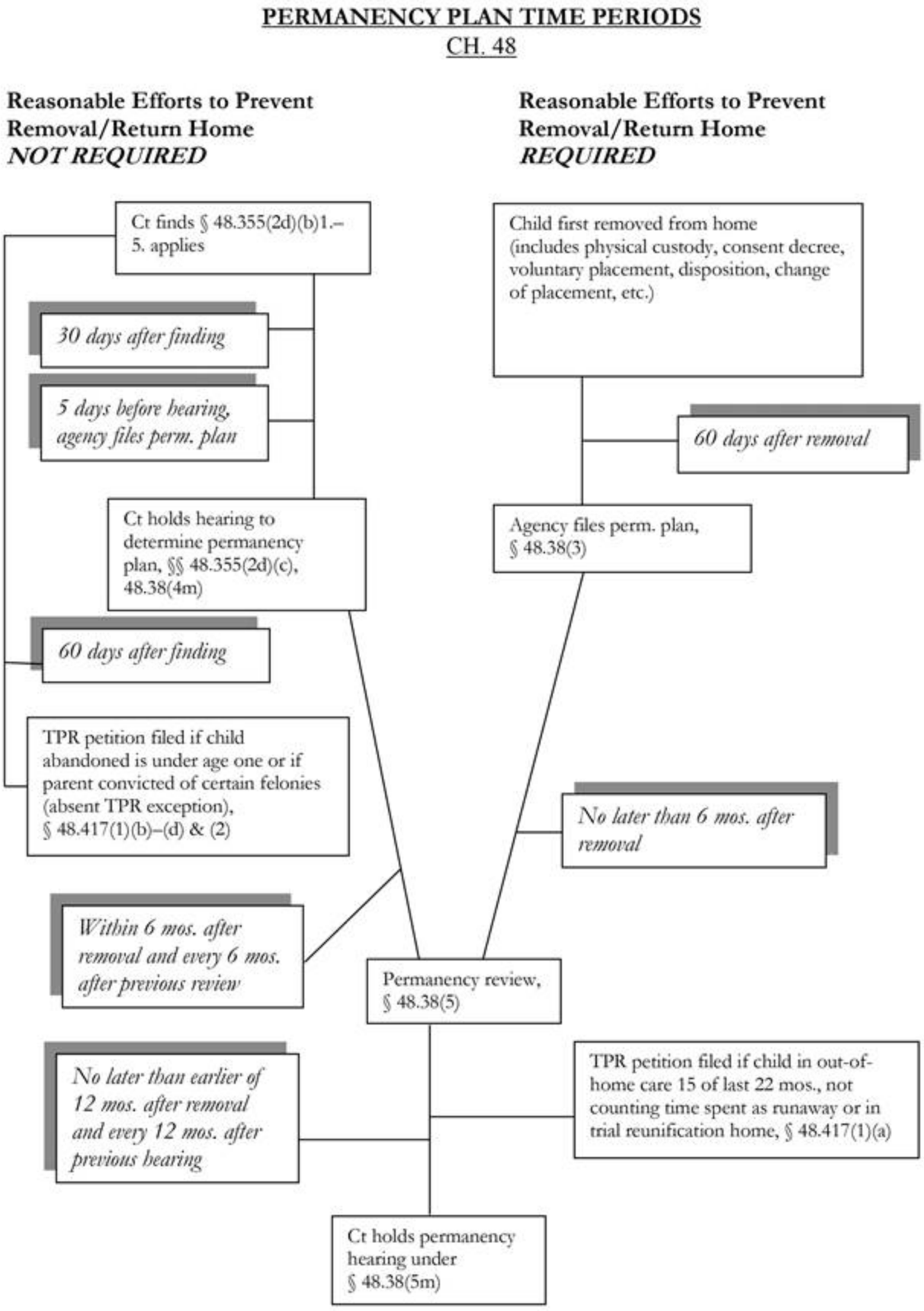
7. For Proceedings in TPR & Guardianships, see JV 13 and JV 16

Michael T v Briggs
(In Int of Katie T)
204 Wis. 2d 401
(CA 1996)

8. For Appointment of GAL in Child Abuse and Harassment TROs and Injunctions, see Family Benchbook

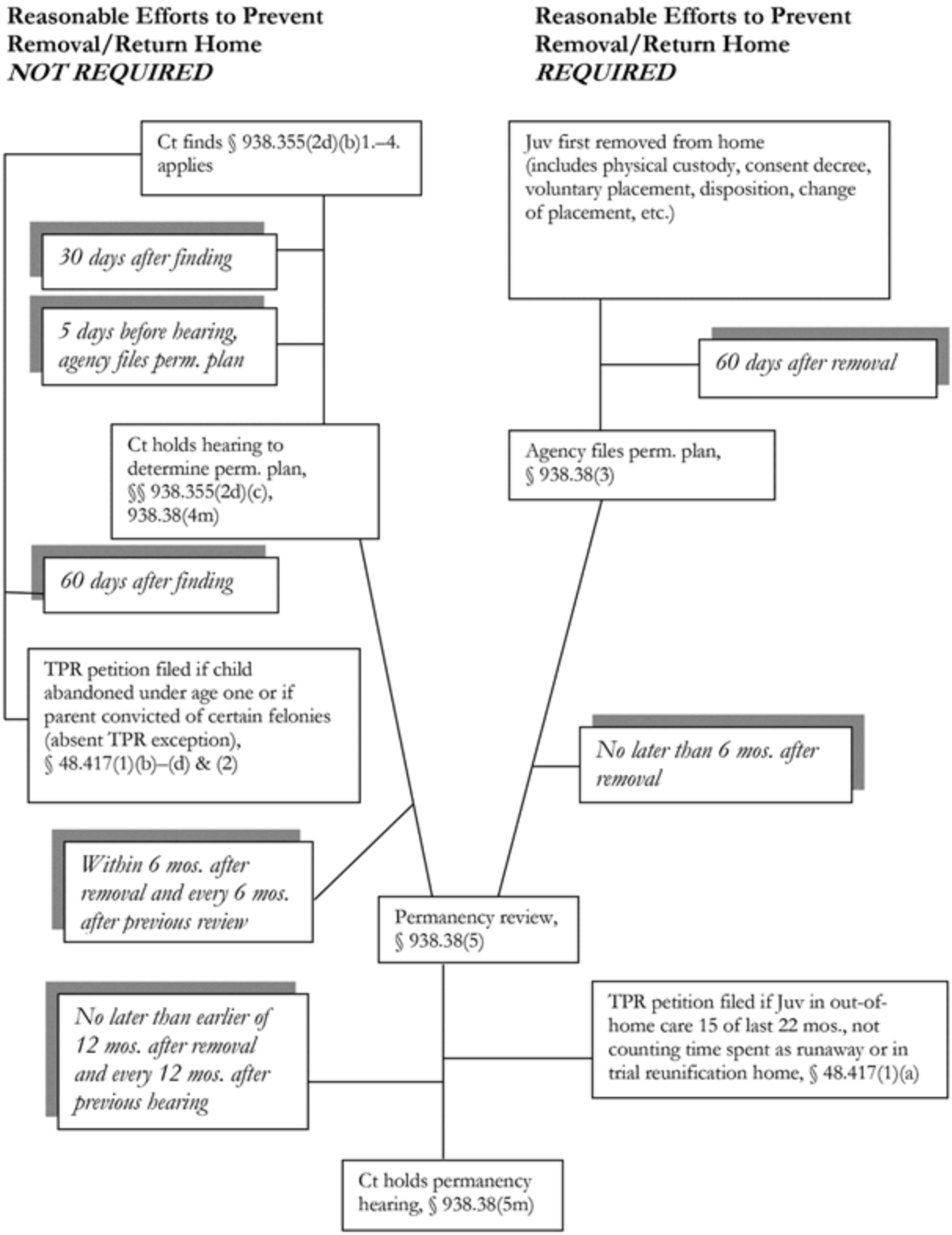
JV 3: TIME CONSTRAINTS

CH. 48 TIME CONSTRAINTS FLOW CHART


PERMANENCY PLAN TIME PERIODS
CH. 48
Reasonable Efforts to Prevent Removal/Return Home NOT REQUIRED
Reasonable Efforts to Prevent Removal/Return Home REQUIRED
Ct finds § 48.355(2d)(b)1.–5. applies
30 days after finding
5 days before hearing, agency files perm. plan
Ct holds hearing to determine permanency plan, §§ 48.355(2d)(c), 48.38(4m)
60 days after finding
TPR petition filed if child abandoned is under age one or if parent convicted of certain felonies (absent TPR exception), § 48.417(1)(b)–(d) & (2)
Within 6 mos. after removal and every 6 mos. after previous review
No later than earlier of 12 mos. after removal and every 12 mos. after previous hearing
Child first removed from home (includes physical custody, consent decree, voluntary placement, disposition, change of placement, etc.)
60 days after removal
Agency files perm. plan, § 48.38(3)
No later than 6 mos. after removal
Permanency review, § 48.38(5)
TPR petition filed if child in out-of-home care 15 of last 22 mos., not counting time spent as runaway or in trial reunification home, § 48.417(1)(a)
Ct holds permanency hearing under § 48.38(5m)

CH. 938 TIME CONSTRAINTS FLOW CHART

PERMANENCY PLAN TIME PERIODS
CH. 938


Reasonable Efforts to Prevent Removal/Return Home NOT REQUIRED
Ct finds § 938.355(2d)(b)1.–4. applies
30 days after finding
5 days before hearing, agency files perm. plan
Ct holds hearing to determine perm. plan, §§ 938.355(2d)(c), 938.38(4m)
60 days after finding
TPR petition filed if child abandoned under age one or if parent convicted of certain felonies (absent TPR exception), § 48.417(1)(b)–(d) & (2)
Within 6 mos. after removal and every 6 mos. after previous review
No later than earlier of 12 mos. after removal and every 12 mos. after previous hearing
Reasonable Efforts to Prevent Removal/Return Home REQUIRED
Juv first removed from home (includes physical custody, consent decree, voluntary placement, disposition, change of placement, etc.)
60 days after removal
Agency files perm. plan, § 938.38(3)
No later than 6 mos. after removal
Permanency review, § 938.38(5)
TPR petition filed if Juv in out-of-home care 15 of last 22 mos., not counting time spent as runaway or in trial reunification home, § 48.417(1)(a)
Ct holds permanency hearing, § 938.38(5m)

1. Delays and Continuances

§ 990.001(4)
§ 801.15

A. For general rules regarding computation of time see Ch 990

St v Elliott
203 Wis. 2d 95 (CA 1996)

1) Under § 801.15(2)(a), Ct has discretion to enlarge time within which to act so long as not erroneous exercise of discretion

B. Children's and Juvenile Justice Codes contain provisions for delays and continuances of time periods, and Ct must comply with §§ 48.315, 48.028(4)(a), 938.315, and 938.028(4)(a)

§ 48.315(1)
§ 938.315(1)

C. Following time periods excluded in computing time periods in Children's and Juv Justice Code

1) Delays resulting from other legal actions concerning (unborn) child/Juv/EM including

§ 48.295
§ 938.295
Shawn BN v St
(In Int of Shawn BN)
173 Wis. 2d 343
(CA 1992)

a. Physical, psychological, mental, or developmental examination

b. AODA dependency assessment

c. Hearing related to mental condition of child, parent, guardian or legal custodian, or EM

d. Prehearing motions

e. Waiver motions

f. Hearings on other matters

§ 48.315(1)
§ 938.315(1)

2) Delays resulting from continuance granted at request or with consent of child/Juv and Atty or unborn child's (UC's) GAL

State v Quinsanna D
(In re TPR to Teyon D)
2002 WI App 318
259 Wis. 2d 429

a. Period of delay consented to by GAL is excluded from computation of deadlines

§ 48.315(1)(c)
§ 938.315(1)(a)3.
Shawn BN v St
(In Int of Shawn BN)
173 Wis. 2d 343
(CA 1992)

3) Delays caused by disqualification of Judge under Ch 48, or delays under Ch 938 caused by disqualification or substitution of Judge, or by any other transfer of case or intake inquiry

4) Delays resulting from continuance granted at request of prosecutor if continuance granted because

a. Material evidence unavailable when due diligence exercised to obtain evidence and reasonable grounds to believe evidence will be available at later date, or

St v Joshua MW
(In Int of Joshua MW)
179 Wis. 2d 335
(CA 1993)

b. Additional time needed to prepare case justified by exceptional circumstances of case

§ 48.315(1)(e)
§ 938.315(1)(a)6.

5) Delay resulting from imposition of consent decree

§ 48.315(1)(f)
§ 938.315(1)(a)7.

6) Delay resulting from absence or unavailability of child/Juv/EM

§ 48.315(1)(fm)
§ 938.315(1)(a)8.

7) Any period of delay resulting from the inability of the Ct to provide the child/Juv with notice of an extension hearing under § 48.365 or § 938.365 because of the child/Juv having run away or otherwise having made himself or herself unavailable to receive that notice

§ 48.315(1)(g)
§ 938.315(1)(g)

8) Reasonable period of delay because child/Juv joined in hearing with another child/Juv whose time for hearing has not expired if good cause for not hearing cases separately

§ 48.315(1)(h)
§ 938.315(1)(a)9.

9) Delay resulting from need to appoint a qualified interpreter

§ 938.315(1)(a)5.

10) In Ch 938 actions, any period of delay resulting from Ct congestion or scheduling

§ 938.315(1)(a)10.

11) Delay resulting from consultation with tribal officials under § 938.24(2r) or § 938.25(2g) in Indian Juv delinquency case

§ 48.315(1)(j)
§ 938.315(1)(a)11.
See § 48.028(4)(a)
§ 938.028(4)(a)

12) Reasonable period of delay of up to 20 days resulting from granting of continuance for Indian child custody procedure

§ 48.315(2m)
§ 938.315(2m)

D. No continuance or extension of time period may be granted, and no period of delay set forth in Sec. C. above may be excluded if to do so would result in any of the following

1) Necessary findings (reasonable efforts to prevent removal made or not required) more than 60 days after the date child/Juv/CEM removed from the home, OR

2) Initial finding under § 48.38(5m) or § 938.38(5m) that the responsible agency has made reasonable efforts to achieve permanency goal of permanency plan more than 12 months after the date child/Juv/CEM removed from the home, OR

3) Subsequent findings under § 48.38(5m) or 938.38(5m) that responsible agency made reasonable efforts to achieve permanency goal of permanency plan more than 12 months after date of previous finding

4) Finding that person's out-of-home care placement under transition-to-independent living agreement is in the child's/Juv's best interests more than 180 days after date on which agreement is entered into

5) Except as required by § 48.028(4)(a) or § 938.028(4)(a)

§ 48.315(1m)

E. In waiver of parental consent proceedings under § 48.375(7), the delays set forth at paras. C.1), 4), 5), 7), 8), and 12) above DO NOT apply

§ 48.315(3)
§ 938.315(3)

F. Failure to act within any Ch 48 or Ch 938 time period does not deprive Ct of competency to proceed

G. If a party or the Ct does not act within applicable time period, Ct may (while assuring safety of child/Juv)

1) Grant a continuance under requirements of § 48.315(2) or § 938.315(2)

2) Dismiss petition with or without prejudice

3) Release child/Juv from secure or nonsecure custody or from the terms of a custody order

4) Grant any other relief Ct considers appropriate

§ 48.315(3)
§ 938.315(3)

H. In Ch 48 and Ch 938, failure to object to delay or continuance waives challenge to Ct's competency to act

MG v La Crosse Cty
Human Servs Dept
(In Int of GH)
150 Wis. 2d 407 (1989)

I. Statutory list of specific circumstances in Sec. C. above does not proscribe all other grounds for extending time deadlines

§ 48.315(2)
§ 938.315(2)
St v Robert K
(In re TPR to Moriah K)
2005 WI 152
286 Wis. 2d 143

J. Continuance granted by Ct only upon showing of good cause in open Ct or during telephone conference, on the record

1) For only as long as necessary

2) Taking into account

a. Request or consent of prosecutor or parties

§ 938.315(2)

b. Interests of the victims

c. Interest of public in prompt disposition of cases

MG v La Crosse Cty
Human Servs Dept
(In Int of GH)
150 Wis. 2d 407 (1989)

3) General requirements of this subsection (**Sec. J.**) control all extensions of time deadlines under Ch 48

a. Continuance may be granted directly under this subsection

JR v St (In re JR)
152 Wis. 2d 598 (1989)

4) Ct may grant sua sponte adjournment

Waukesha Cty
v Darlene R
(In Int of Victoria R)
201 Wis. 2d 633
(CA 1996)

5) Clerk's minutes may satisfy on the record requirement in Ch 48 cases

§ 48.315(1)(fm)
§ 48.365(6)

§ 938.315(1)(a)8.
§ 938.365(6)

K. Statutory provisions for continuances apply to extensions under § 48.365 and § 938.365

1) Petition for extension must be on file before expiration of order

St v Michael S
(In Int of Michael S)
2005 WI 82
282 Wis. 2d 1

2) Ct may not grant 30-day extension under § 938.365(6) after expiration of dispositional order

2. Child/Juv/EM Held in Custody

§ 48.21(1), § 938.21(1)

A. Custody hearing must be held

§ 48.21(1)
§ 48.213(1)

1) In Ch 48 (including AEM), within 48 hours of time decision to hold was made, excluding Saturdays, Sundays, and legal holidays

§ 48.21(1)(b)

a. Child may be held an additional 72 hours if no petition filed but Ct finds probable cause that child is in imminent danger to self or others, or that child is without adequate supervision or care, or, if child is CEM, that there is substantial risk to health of UC

§ 938.21

2) In Ch 938, within 24 hours from end of day decision was made, excluding Saturdays, Sundays, and legal holidays

Question

3) Does requirement of *Cty of Riverside v McLaughlin*, 111 S. Ct. 1661 (1991), and *St v Koch*, 175 Wis. 2d 684 (1993)—that a hearing be held within 48 hours not excluding weekends and holidays, for person arrested without a warrant on a criminal charge—apply to AEM in custody without a warrant and without any criminal charges?

§ 48.21(5)(b)1.
§ 938.21(5)(b)1.

B. Reasonable efforts required—if holding child/Juv in custody, Ct order must include the following:

1) Finding that continued placement would be contrary to child's/Juv's welfare, and

2) Finding that reasonable efforts were made to prevent removal of child /Juv from home while assuring that child's/Juv's health and safety are paramount concerns, unless reasonable efforts not required

§ 48.21(5)(b)1m.
§ 938.21(5)(b)1m.

a. If, for good cause shown, insufficient information available for Ct or CCC to make finding that reasonable efforts were made to prevent removal of child/Juv from home, Ct must

- Make finding as to whether reasonable efforts were made to make it possible for child/Juv to return safely home, and

- Order primary agency to file sufficient information no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after date on which order is granted

§ 48.21(5)(b)1.c.
§ 938.21(5)(b)1.c.

3) Finding whether reasonable efforts have been made to make it possible for child/Juv to return safely home

§ 48.21(5)(b)1.d.
§ 938.21(5)(b)1.d.

4) If child/Juv is under supervision of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more), order ordering child/Juv into placement and care responsibility of that agency and assign it primary responsibility for providing services

5) For specific findings, see **JV 4**, **Temporary Custody (Detention) Hearing**

§ 48.21(5)(d)
§ 938.21(5)(d)

C. Reasonable efforts not required—within 30 days after Judge or CCC finds reasonable efforts NOT required, must hold hearing to determine permanency goal, and, if applicable, any concurrent permanency goals for child/Juv

§ 48.38(4m)(b)
§ 938.38(4m)(b)

1) Not less than 10 days before hearing, Ct shall notify child/Juv, parent, guardian, legal custodian, foster parent, or other physical custodian in § 48.62(2), operator of the facility in which the child/Juv is living, or relative with whom child/Juv is living, of time, place, and purpose of hearing, of issues to be determined at hearing, and of right to be heard at hearing

a. If child/Juv is Indian child/Juv, Ct must notify child's/Juv's Indian custodian and tribe

§ 48.38(4m)(a)
§ 938.38(4m)(a)

2) Not less than 5 days before hearing, responsible agency shall file permanency plan with Ct

D. Placements certified as qualified residential treatment programs

§ 48.21(1)(c)
§ 938.21(1)(c)

1) If child/Juv has been held in an RCCCY, group home, or shelter care facility certified under § 48.675, then Ct must receive by the custody hearing, or within 30 days after placement if not available at custody hearing, a standardized

assessment and recommendation from a qualified individual addressing

a. Whether proposed placement will provide child/Juv with most effective and appropriate level of care in least restrictive environment

b. How placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan

c. Reasons why child's/Juv's needs can or cannot be met by child's/Juv's family or in foster home. Shortage or lack of foster homes is not an acceptable reason for determining that the child's/Juv's needs cannot be met in foster home

d. Placement preference of the family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not the placement recommended by the qualified individual, why that recommended placement is not preferred

§ 48.02(14k)
§ 938.02(14m)
42 USC 675a(c)(1)(D)

Note: "Qualified individual" is defined as a trained professional or licensed clinician who is not an employee of the State agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the State

§ 48.02(17t)
§ 938.02(17t)

"Standardized assessment" means an assessment, using a tool determined by DCF, of the strengths and needs of a child/Juv to determine appropriateness of a placement in a residential care center, group home, or shelter care facility certified under § 48.675. The definition under § 48.02(17t) does not apply to § 48.62(8)(b)

E. Requirements for filing petition for child/Juv in custody

§ 48.21(1)(a)
§ 938.21(1)(a)

1) Petition shall be filed by the time of the custody hearing except that written statement of reasons for holding in custody may be substituted when

§ 48.19(1)(b)
§ 938.19(1)(b)

a. Capias issued by Judge (Ch 48) or Ct (Ch 938)

b. Law enforcement officer believes on reasonable grounds that

§ 48.19(1)(d)2.
§ 938.19(1)(d)2.

- Capias or warrant for child's/Juv's apprehension has been issued in another state, or

§ 938.19(1)(d)6.

- Juv has violated condition of Ct-ordered supervision, community supervision, or aftercare supervision, a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in intensive supervision program under § 938.534, or

§ 48.19(1)(d)7.
§ 938.19(1)(d)7.

- Child/Juv has violated conditions of Ct order regarding continuation of temporary custody, or

- Child/Juv has violated conditions of order by intake worker for temporary physical custody

§ 48.21(1)
§ 938.21(1)

c. Child/Juv has run away from another state

§ 48.21(1)(b)
§ 938.21(1)(b)

2) If no petition filed by time of custody hearing

a. In Ch 938, one 48-hour extension of custody from time of hearing may be granted, excluding Saturdays, Sundays, and legal holidays

b. In Ch 48, one 72-hour extension of custody from time of hearing may be granted excluding Saturdays, Sundays, and legal holidays

c. Only upon determination at hearing by Judge or CCC of probable cause to believe that

- Child/Juv is imminently dangerous to self or others, or

- Parent, guardian, legal custodian or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care, or

- If CEM, finding under § 48.21(1)(b)4. See **JV 4, Sec. 5**

- Under Ch 48, additional time is required to determine whether petition needs to be filed

d. Extension may be granted only once

§ 48.21(1)(bm)
§ 938.21(1)(b)

- If petition not filed within extension period, Ct to order child's/Juv's immediate release from custody

MG v La Crosse Cty Human Servs Dept (In Int of GH)
150 Wis. 2d 407 (1989)

3) If custody hearing waived, time period does not apply. Cty has 20 days to file

4) Child/Juv must be released from custody, when

§ 48.21(1)
§ 938.21(1)

a. Petition not filed by time of custody hearing, AND

- Ct does not grant extension for filing petition, OR
- Petition not filed within extension period

b. Hearing not held within custody time period

§ 48.24(5), § 938.24(5)

c. Note: Failure to object to untimely filed petition waives any challenge to Ct's competency to act

3. Time Periods for Intake Decision and Filing Petition

§ 48.24(5)
§ 938.24(5)
Sheboygan Cty DHHS v Jodell G (In Int of Andrea PB)
2001 WI App 18
240 Wis. 2d 516

A. In CHIPS/UCHIPS case, within 60 days after receipt of referral, information intake worker shall request that a petition be filed, enter into an informal disposition, or close case. In JIPS/delinquency case, within 40 days after receipt of referral, intake worker shall request that a petition be filed, enter into deferred prosecution agreement, or close case

§ 938.245(1m)

1) In delinquency cases (including § 938.13(12)), intake worker shall, as soon as practicable, but before entering into deferred prosecution agreement, confer with victims. *See* **JV 12** for further discussion of victims' rights

JLW v Waukesha Cty (In Int of JLW)
143 Wis. 2d 126
(CA 1988)

2) If intake worker refers case to another Cty, intake worker in new Cty has 40 days to complete intake decision from date of acceptance of referral

Comment

a. *JLW* was a delinquency case, but the same rationale should apply in counting the 60-day period in a CHIPS/UCHIPS case.

§ 48.315(3)
§ 938.315(3)

3) Failure of Ct or party to act within any time period does not deprive Ct of personal or subject-matter jurisdiction or competency to act

§ 48.25(2)
§ 938.25(2)(a)

B. Within 20 days after intake worker's request filed, prosecutor shall file petition, close case, with notice to victims, or refer back to intake (Ch 48) or intake/investigating law enforcement agency (Ch 938)

1) Additional time to file petition may be obtained by

§ 48.25(2)
§ 938.25(2)(a)

a. Referring back to intake worker (Ch 48) or intake worker/law enforcement agency (Ch 938) for further investigation, which must be completed within 20 days

St v Everett
231 Wis. 2d 616
(CA 1999)

b. If matter referred from Cty of offense to Cty of residence, time periods begin again

c. Getting extension from Ct with showing of good cause

Jason B v St
(In Int of Jason B)
176 Wis. 2d 400
(CA 1993)
FEW v St (In Int of FEW)
143 Wis. 2d 856
(CA 1988)

- To determine whether good cause for extension, Ct to apply 3-pronged test

— Did party seeking enlargement of time act in good faith?

— Has opposing party been prejudiced?

— Did dilatory party take prompt action to remedy situation?

d. Filing untimely petition with statement of reasons for delay and obtaining Ct approval of delay at plea hearing upon showing of good cause

§ 48.315(3)
§ 938.315(3)

2) Failure of Ct or party to act within any time period does not deprive Ct of personal or subject-matter jurisdiction or competency to act

§ 48.25(2)
§ 938.25(2)(a)

C. If prosecutor declines to file and refers back to intake, intake worker has 20 days to close case or enter informal disposition/deferred prosecution

§ 48.24(5)
§ 938.24(5)

D. If intake worker closes case or enters into informal disposition/deferred prosecution, must notify prosecutor

§ 48.24(5)
§ 48.245(5m)
§ 938.24(5)
§ 938.25(2)(b)

1) If intake worker refuses to request filing petition, appropriate official has 20 days after receipt of notice of informal disposition in CHIPS/UCHIPS cases or case closure or deferred prosecution in delinquency cases to file petition

2) Judge shall grant appropriate relief under § 48.315(3) or § 938.315(3) for petition not filed within time periods; failure to object waives challenge to Ct's competency to act

§ 48.245(7)
§ 938.245(7)

E. If obligations under informal disposition or deferred prosecution agreement not being met, intake worker must notify prosecutor within 10 days after cancellation

§ 48.25(2)
§ 938.245(7)(a)

1) Prosecutor has 20 days after notice to file petition

§ 48.245(7)
§ 938.245(7)(a)

2) Failure to object if petition not filed within time period waives challenge to Ct's competency to act

F. If time period missed, see § 48.315(3) or § 938.315(3)

§ 48.273
§ 938.273

4. Service of Notice or Summons

A. Personal service made at least 72 hours before hearing, or

B. Mail at least 7 days before hearing, except mail

Recommendation
§ 801.15

1) 10 days before hearing because Saturdays, Sundays, and holidays excluded

2) CHIPS or JIPS petition to person out of state at least 14 days before hearing

3) Service by email or fax may be valid under § 801.14(2)

§ 48.273(1)(c)2.
§ 938.273(1)(c)2.

C. When petition is filed under §§ 48.13, 48.133, or 938.13(4), (6), (6m), or (7) and involves Indian child/Juv who has been removed from home of parent or Indian custodian, notice by mail must be received 10 days before hearing and, if person required to notice cannot be determined, notice to US Sec'y of Interior at least 15 days before hearing

§ 48.299(9)
§ 938.299(10)

D. If at any point in the proceeding it becomes known that child/Juv is an Indian child/Juv, notice is required as specified in § 48.028(4)/§ 938.028(4), and next hearing may not be held before compliance with above notice

5. Substitution of Judge

§ 48.29(1)
§ 938.29(1)

A. Not available for custody hearing

§ 938.29(2)

B. Waiver to Adult Ct hearing

1) Request for substitution must be filed with Clerk of Ct before close of working day preceding hearing except Judge may allow request on the day of hearing

§ 48.29(1)
§ 938.29(1)

C. Plea hearing

1) Request for substitution must be filed with Clerk of Ct before or during plea hearing

Brown Cty
Dept of Human Servs
v Terrance M (In re
TPR to Genesis M)
2005 WI App 57
280 Wis. 2d 396

2) Sec. 801.58 does not apply in Juv Ct

§ 48.30(2)

6. Demand for Jury Trial in Ch 48 Actions

A. Available under Ch 48 only

B. Must be made before the end of the plea hearing

C. If nonpetitioning party, including child, makes request to consult with Atty on issue, Judge must grant continuance

7. Consent Decree

§ 48.32(1)
§ 938.32(1)

A. Before entry of judgment in CHIPS, UCHIPS, JIPS, or delinquency

§ 938.32(1)(am)

1) DA or Corp Counsel must first offer victims opportunity to confer with them

B. Term

§ 938.32(2)(a)

1) If JIPS or delinquency, decree remains in effect for up to one year unless discharged sooner by Ct

§ 48.32(2)(a)

2) If CHIPS/UCHIPS, decree remains in effect for 6 months unless discharged sooner by Ct

§ 48.32(2)(c)
§ 938.32(2)(c)

3) Upon motion and notice, decree may be extended for up to 6 additional months

§ 48.32(1)(am)
§ 938.32(1)(bm)

4) Amended consent decree cannot extend expiration date of original consent decree

8. Permanency Plan

§ 48.355(2d)(c)
§ 938.355(2d)(c)

A. If finding that reasonable efforts not required, Ct must hold hearing to determine permanency goal and, if applicable, any concurrent permanency goals within 30 days after finding

§ 48.38(3)
§ 48.355(2e)
§ 938.38(3)
§ 938.355(2e)

B. In other cases, agency must present permanency plan no later than 60 days after date that child/Juv was first removed from home, or, if agency is recommending out-of-home placement, at dispositional hearing, whichever

is sooner

C. Permanency reviews and hearings

§ 48.38(5)
§ 938.38(5);
see also § 48.38(4m),
§ 938.38(4m)

1) Permanency review by panel or Ct must be conducted within 6 months after date "child/Juv is removed from home" (or permanency hearing by Ct within 30 days after a "no reasonable efforts required" finding)

a. 6-month reviews must be held, but may be conducted by panel

§ 48.38(5m)
§ 938.38(5m);
cf. § 48.315(2m)
§ 938.315(2m)

2) Ct must hold hearing not less than 12 months after removal, and every 12 months thereafter as long as child remains in out-of-home placement

3) NOTE: time is counted from date of removal or date of "reasonable efforts not required" finding, not date of disposition

4) See **JV 9, ASFA and Permanency Planning**, for permanency hearing requirements

§ 48.38(5)(b), (5m)(b);
see also § 938.38(5)(b),
(5m)(b)

5) No less than 30 days before review or hearing, Ct shall send notice of time, place, and purpose of hearing, of issues to be determined, and of right or opportunity to be heard at hearing, to child/Juv, parent, guardian, legal custodian, foster parent, operator of facility in which child/Juv living, relative with whom child/Juv living, child's/Juv's counsel and GAL, child's CASA, agency that prepared permanency plan, school, person representing interests of public, and, if child/Juv is Indian child/Juv, to Indian custodian and tribe

a. Notice to school must include name and contact information for caseworker or social worker assigned to case

§ 48.38(5)(bm), (5m)(c)
§ 938.38(5)(bm), (5m)(c)

6) All those entitled to notice shall have right to be heard by submitting written comments not less than 10 working days before review or hearing or by participating at review or hearing

§ 48.38(5)(d), (5m)(d);
see also § 938.38(5)(d),
(5m)(d)

7) No less than 5 days before review or hearing, responsible agency shall provide copy of permanency plan and any written comments received from those who received notice to Ct, child's/Juv's parent, guardian and legal custodian, person representing interests of the public, child's/Juv's counsel/GAL and child's CASA, and, if child/Juv is Indian child/Juv, to Indian custodian and tribe

9. Plea Hearing

§ 48.30(1)
§ 938.30(1)

A. Must be held within 10 days after filing of petition for child/Juv in secure custody

1) Subject to § 48.299(9) and § 938.299(10) notice requirements for Indian child/Juv

B. Must be held within 30 days after filing of petition for child/Juv/EM who is NOT in secure custody

§ 48.305
§ 48.19(1)(c), (cm), (d)5., (d)8.
§ 48.193(1)(c), (d)2.
§ 938.305
§ 938.19(1)(c), (d)5.

1) EXCEPT if child/Juv removed from parent or guardian without consent by Ct order or because law enforcement believed child/Juv suffering from illness or injury or in immediate danger; or if AEM taken into custody without her consent by Ct order or because law enforcement believed there was substantial risk to physical health of UC

a. Ct must schedule plea and fact-finding hearing within 30 days after parent's, guardian's, or AEM's request

b. May be extended only with consent of requesting parent, guardian, or AEM

2) Subject to § 48.299(9) and § 938.299(10), when determination or reason to believe proceeding involves Indian child/Juv

§ 938.30(1)

3) Except 45 days in joint Municipal Ct

§ 48.31

10. Fact-Finding Hearing

§ 48.30(7)
§ 938.30(7)

A. Within 20 days after plea hearing for child/Juv in secure custody

B. Within 30 days after plea hearing for child/Juv/EM NOT in secure custody

4) See **Plea Hearing** above for exception

C. Subject to § 48.299(9) and § 938.299(10), when determination or reason to believe proceeding involves Indian child/Juv

§ 48.31(7), § 938.31(7)
§ 48.30(6), § 938.30(6)

11. Dispositional Hearing

A. Within 10 days after adjudication for child/Juv in secure custody, subject to § 48.299(9)/§ 938.299(10) if Indian child/Juv

B. Within 30 days from adjudication for child/Juv/EM NOT in secure custody

CML v St (In Int of CML)
157 Wis. 2d 152
(CA 1990)

1) Dispositional hearing must be held within 30 days after Ct's decision on motion to enter judgment notwithstanding jury verdict, subject to § 48.299(9) and § 938.299(10) if Indian child/Juv

a. Trial Ct's duty to determine whether jury verdict is supported by evidence is part of fact-finding hearing

§ 48.30(6), § 48.31(7)
§ 938.30(6), § 938.31(7)

C. May hold dispositional hearing immediately after plea or fact-finding hearing (subject to § 48.299(9) and § 938.299(10) if Indian child/Juv) if

1) All parties consent, and

§ 48.33, § 938.33

2) Ct report requirements met

§ 48.33(4), § 938.33(4)

3) Financial information of parents and Juv available if out-of-home placement

§ 938.27(4m)
§ 938.299(1)(am)

4) Victim notified

§ 48.355(2)(b)3.
§ 938.355(2)(b)3.

12. Termination and Extension of Orders

§ 48.355(4)

A. Order relating to unborn child in need of protection or services (UCHIPS) that is made before UC is born shall terminate at end of one year after its entry, unless Judge specifies shorter period of time or terminates order sooner

§ 48.355(4)
§ 938.355(4)

B. Order made before child/Juv attains 18 that places or continues placement of child/Juv in home shall terminate one year after date order was granted unless Ct specifies shorter period of time Ct terminates the order sooner

§ 48.368
§ 938.368

1) EXCEPT if petition for TPR filed or appeal from TPR judgment filed during year dispositional order in effect, order remains in effect until all proceedings related to filing of petition or appeal are concluded

§ 48.355(4)
§ 938.355(4)

C. Order made before child/Juv attains 18 that places or continues placement of child/Juv in foster home, group home, RCCCY, in home of relative other than parent, or in a supervised independent living arrangement shall terminate at latest of the following dates unless Ct specifies a shorter period of time or terminates order sooner:

1) The date on which the child/Juv attains 18

2) The date that is one year after the date on which the order is granted, or

3) The date on which the child/Juv is granted a high school or high school equivalency diploma or the date on which the child/Juv attains 19 years of age, whichever occurs first, if child/Juv is full-time student at secondary school or its vocational or technical equivalent and is reasonably expected to complete program before attaining 19 years of age

4) The date on which the child/Juv is granted a high school or high school equivalency diploma or the date on which the child/Juv attains 21 years of age, whichever occurs first, if the child/Juv is a full-time student at a secondary school or its vocational or technical equivalent and if an IEP under § 115.787 is in effect for the child/Juv

§ 938.355(4)(b)

D. If disposition to Type 2 RCCCY or Juv correctional facility or secured RCCCY made before Juv attains 18, Ct may make order apply for up to 2 years or until Juv's 18th birthday, whichever is earlier, unless Ct specifies shorter period or terminates order sooner

E. Any request for extension must be filed before termination of order

§ 48.365(6)
§ 938.365(6)

1) If Judge unable to conduct hearing prior to termination date, may extend order for not more than 30 days, not including any period of delay from circumstances specified in §§ 48.315(1) or 938.315(1)

St v Michael S
(In Int of Michael S)
2005 WI 82
282 Wis. 2d 1

a. Ct may not grant 30-day extension after expiration of order

F. See JV 8 and JV 11

13. Appeals

A. Appeals from Ch 48 and Ch 938 must be initiated within time periods of § 808.04 and are governed by procedures in §§ 809.30–809.32

1) Does not apply to TPR, adoption, and waiver of parental consent to abortion

§ 808.04(4)

B. Appeal by State of case under Ch 48 or Ch 938 shall be initiated within 45 days of entry of judgment of order appealed from

§ 808.04(3)
§ 809.30(2)(b)

C. Appeal by a party other than the State or a motion for reconsideration of final judgment or order must be filed and served within 20 days after entry of the Ct's final order

Commenced by filing notice of intent to pursue postdisposition relief

§ 809.30(2)(b)

If the record discloses that sentencing or final adjudication occurred after notice of intent was filed, notice shall be treated as filed after final adjudication on the day of the final adjudication

D. TPR Appeal—see JV 13

JV 4: TEMPORARY CUSTODY (DETENTION) HEARING

1. Taking Child/Juvenile into Custody

A. ICWA applies to temporary and all other out-of-home placements. See JV 17, ICWA

§ 48.19(1), § 938.19(1)
§ 48.981(3)(b)2., (c)2.

B. Child/Juv may be taken into custody

1) By warrant

§ 48.19(1)(b)
§ 938.19(1)(b)
§ 48.28, 938.28
RMC Form JD-1714

2) By capias issued by Juv Ct because

a. Summons cannot be served

St v Jermaine TJ
(In Int of Jermaine TJ)
181 Wis. 2d 82
(CA 1993)

b. Child/Juv fails to obey summons

c. Ct finds summons will be ineffectual

§ 48.19(1)(c)
§ 938.19(1)(c)

3) By judicial order

a. After satisfactory showing made that child/Juv's welfare demands immediate removal from present custody

§ 48.19(1)(c)
§ 938.19(1)(c)

b. Must specify nonsecure custody under § 48.207(1) or § 938.207

§ 48.19(1)(cm)

c. After satisfactory showing that there is substantial risk to health of UC due to EM's habitual lack of self-control in use of AOD exhibited to a severe degree and EM refusing or not making good-faith effort to participate in AODA services

St v Woods
117 Wis. 2d 701 (1984)

4) When law enforcement officer has reasonable grounds to believe that

§ 48.19(1)(d)
§ 938.19(1)(d)

a. Capias or warrant issued in Wis or other state or child/Juv is fugitive from justice

St ex rel Jackson
v Froehlich
77 Wis. 2d 299 (1977)

- "Fugitive status attaches to anyone who has committed a crime within a state and, when sought to be subject to its criminal process for his offense, has left its jurisdiction, and is found in another jurisdiction"

§ 48.19(1)(d)4.
§ 938.19(1)(d)4.

b. Child/Juv has run away from parent, guardian, or legal or physical custodian

§ 48.981(3)(b)
§ 48.19(1)(d)5.
§ 938.19(1)(d)5.

c. Child/Juv suffering from illness or injury or in immediate danger, and removal from surroundings is necessary

§ 48.19(1)(d)7.
§ 938.19(1)(d)7.

d. Child/Juv has violated conditions of temporary physical custody order

§ 48.19(1)(d)8.

e. Child is EM and there is substantial risk of harmful effects to UC and child when born resulting from habitual lack of self-control in use of AOD exhibited to a severe degree unless EM taken into custody

§ 48.195(1m)

f. Parent of child 72 hours old or younger has relinquished custody of child

§ 938.19(1)(d)3.

g. Juv is committing or has committed state or federal crime

§ 938.19(1)(d)6.

h. Juv has violated condition of Ct-ordered supervision, community supervision, or aftercare supervision, a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in the intensive supervision program under § 938.534

§ 938.20(2)
§ 938.19(1)(d)8.

i. Juv has violated civil law or local ordinance "punishable by forfeiture," provided that Juv is released immediately or as soon as reasonably possible

- But see *St v JFF (In Int of JFF)*, 164 Wis. 2d 10 (CA 1991)

Recommendation

- Review actual language of municipal ordinance to determine whether it is "punishable by a forfeiture"

§ 938.19(1)(d)10.

j. Juv is absent from school without an acceptable excuse under § 118.15

§ 48.08(2)
§ 938.08(2)

5) When person listed below has reasonable grounds to believe child/Juv is suffering from illness or injury or child/Juv is in immediate danger and removal from surroundings is necessary, **OR** child/Juv comes voluntarily

a. Intake or dispositional worker

b. Person authorized by intake or dispositional worker to provide services

c. DOC staff

§ 48.08(3)

6) When intake or dispositional worker takes EM into custody voluntarily or when there is substantial risk that physical health of UC, and of child when born, will be seriously affected or endangered due to EM's habitual lack of self-control in use of AOD, exhibited to a severe degree

§ 938.08(3)(a)

7) When person listed below has reasonable grounds to believe Juv has failed to return to Juv correctional facility or RCCCY after authorized absence, **OR** person is in prompt pursuit of Juv who has run away from Juv correctional facility or RCCCY

a. Designated DOC personnel

b. Law enforcement officers

c. Designated agency personnel under DOC contract

§ 938.19(1m)

8) Upon request of parent, guardian, legal custodian, or Juv's school attendance officer, when a Juv is absent from school without an acceptable excuse under § 118.15

§ 938.355(6d)(a)

9) When Juv's caseworker or any other person authorized to provide intake or dispositional services has reasonable grounds to believe Juv has violated a delinquency dispositional order

C. Who may take a child/Juv into custody

§ 48.19(1)(c), (d)
§ 938.19(1)(d)
§ 938.08(2), (3)

1) Law enforcement officer

§ 48.08(2), § 938.08(2)
§ 48.19(1)(c)
§ 48.981(3)(c)2.

2) Intake or disposition worker

§ 48.981(3)(c)2.

3) Child abuse/neglect investigator

§ 938.08(3)

4) Designated DOC employees and designated agency personnel under DOC contract

§ 938.19(1m)
§ 118.16(2m)(a)

5) Concerning truancy only, school administrator's designee may be any of the following

a. School district employee directly involved in educational program for Juv, or

b. School district employee directly involved in provision of modified or special programs or alternative educational programs at Juv's school

c. School social worker who provides services at Juv's school, or

d. Social services agency employee providing services to truant Juv or Juv's family, or

e. School attendance officer if such officer would also qualify under paras. a., b., or c., above

§ 48.195(1m)

6) Concerning relinquishment only, emergency medical services practitioner or hospital staff member

D. Notification of parents

§ 48.19(2)
§ 938.19(2)

1) Person taking child/Juv into custody must immediately attempt to notify parent, guardian, legal custodian, and Indian custodian by most practical means and continue until

a. Notification made, or

b. Child/Juv delivered to intake worker

§ 938.20(2)(e)

c. In truancy cases only, Juv delivered to youth service center (where available)

§ 48.195(2)

2) Notification not applicable in relinquishment cases because of anonymity provisions

§ 48.19(2)
§ 938.19(2)

3) When child/Juv delivered to intake worker, worker or designee must continue attempts to notify parent, guardian, legal custodian, or Indian custodian until successful

E. Release from custody

§ 48.20(2)(ag)
§ 938.20(2)(ag)

1) Statutory preference is for child/Juv to be released from custody as soon as reasonably possible

2) Release may be to

§ 48.20(2)(ag)
§ 938.20(2)(ag)

a. Parent, guardian, legal custodian, or Indian custodian

§ 48.20(2)(b)
§ 938.20(2)(b)

b. If parent, guardian, legal custodian, or Indian custodian unavailable, unwilling, or unable to provide supervision for child/Juv, then child/Juv may be released to responsible adult with appropriate counseling or warnings

§ 48.20(2)(c)
§ 938.20(2)(c)

c. Self, if 15 years or older, with appropriate counseling and warnings

§ 48.20(2)(d)
§ 938.20(2)(d)

d. Runaway home, if child/Juv is a runaway

§ 938.20(2)(e), (f), (g)

e. In truancy cases only, release to

- Adult as provided in para. a. or b. above, or
- Youth service center, if available, or
- School administrator or designee, or
- Self, after appropriate counseling or warnings

§ 938.20(2)(cm)

f. DOC or Cty Dept, whichever has supervision of Juv, if Juv has violated terms of community supervision or aftercare supervision, a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in the intensive supervision program under § 938.534

§ 48.195(2)
§ 48.20(3)
§ 938.20(3)

3) Except in relinquishment cases, person who took child/Juv into custody must immediately notify parent, guardian, legal custodian, and Indian custodian of

a. Time and circumstances of release

b. Person, if any, to whom child/Juv released

§ 48.20(3), § 938.20(3)

F. Child/Juv not released from custody

1) Person taking child/Juv into custody must

a. Arrange for child/Juv to be interviewed by intake worker in manner determined by Ct and law enforcement agencies, and

b. Make written statement with supporting facts as to why child/Juv taken into custody

- Child 12 or older/Juv 10 or older and intake worker shall receive copy of written statement
- Statement may be read to intake worker if face-to-face interview not required

G. Special custodial circumstances

§ 48.20(4), (4m)
§ 938.20(4)

1) Child/Juv/UC/CEM suffering from serious physical condition requiring prompt diagnosis or treatment must be delivered to hospital or physician's office

a. See also §§ 48.373 and 938.373 (Medical Authorization)

§ 48.20(5)
§ 938.20(5)

2) Child/Juv believed to be mentally ill, drug dependent, or developmentally disabled, AND

a. Exhibiting conduct that constitutes a substantial probability of physical harm to self or others, or

b. A very substantial probability of physical impairment or injury to child/Juv exists due to child's/Juv's impaired judgment, and

§ 51.15

c. Standards for emergency detention are met under Mental Health Act

- Then, procedures and places for emergency detention under Mental Health Act must be used

§ 48.20(6), § 938.20(6)

3) Child/Juv is believed to be intoxicated, AND

a. Has threatened, attempted, or inflicted physical harm on self or another and is likely to inflict such physical harm unless committed, or

b. Is incapacitated by alcohol or another drug

§ 51.45(11)

- Then, procedures and places for emergency detention under Mental Health Act must be used

§ 938.209(2m)(a)

4) Juv alleged to have committed delinquent act may be held in municipal lock-up facility under criteria in **Sec. 1.H.** below for up to 6 hours for investigative purposes

§ 48.195(1m)

5) In relinquishment cases, law enforcement officer, emergency medical services practitioner, or hospital staff member taking relinquished child into custody shall take any action necessary to protect health and safety of child and

a. Within 24 hours after taking child into custody, deliver child to intake worker, and

§ 69.14(3)

b. Within 5 days after taking child into custody, file a birth record for the child

H. Criteria for holding Juv in a municipal lock-up facility

§ 938.209(2m)(a)

1) All the following must be met

a. Juv alleged to have committed a delinquent act

b. DOC approved facility as suitable for holding Juvs

c. Juv held not more than 6 hours while waiting hearing

d. There is sight and sound separation between Juv and any adult held in facility

e. Juv held for investigative purposes only

2. Taking AEMs into Custody

§ 48.193

A. AEM may be taken into custody under any of the following

§ 48.193(1)(a)

1) By warrant

§ 48.193(1)(b)

2) By capias issued by Ct under § 48.28 for failure to obey summons or capias

§ 48.193(1)(c)

3) By order of a Judge after satisfactory showing that all the following exist

a. Adult is EM

b. AEM exhibits habitual lack of self-control in use of AOD to severe degree

c. There is substantial risk that physical health of UC and child when born will be seriously affected or endangered unless AEM taken into custody, and

d. AEM refusing or has refused AODA services or not making/has not made good-faith effort to participate in AODA services

§ 48.193(1)(d)

4) If law enforcement officer has reasonable grounds that any of following exist

a. Capias or warrant issued, or

b. There is substantial risk that physical health of UC and child when born will be seriously affected or endangered unless AEM taken into custody, or

c. AEM violated condition of order

§ 48.193(2)

B. Adult friend or relative of AEM must be notified either by person taking custody of AEM or intake worker

C. Release of AEM from custody

§ 48.203(1)

1) Person taking AEM into custody shall make every effort to release AEM

§ 48.203(1)

2) Release may be to

a. Adult relative or friend of AEM after appropriate counseling or warning

b. Self-supervision of AEM after appropriate counseling or warning, if relative or friend unavailable, unwilling, or unable to accept AEM

D. AEM NOT released from custody

§ 48.203(2)

1) If AEM is not released, then person with custody shall

a. Arrange for AEM to be interviewed by intake worker under § 48.067(2), and

b. Make a written statement with facts supporting custody decision, and provide copy to AEM and intake worker (statement may be read to intake worker if intake interview not in person)

§ 48.203(3)

2) AEM shall be taken to a hospital or physician's office by intake worker or other appropriate person if AEM or UC suffering from serious physical condition that requires prompt diagnosis or treatment

§ 48.203(4)

3) If AEM believed to be mentally ill, developmentally disabled, or drug dependent, and meets § 51.15 criteria, then intake worker, person having custody of AEM, or other appropriate person shall proceed under § 51.15

§ 48.203(5)

4) If AEM believed to be intoxicated and to meet criteria of § 51.45(12), then intake worker, person with custody, or other appropriate person shall proceed under § 51.45(11)

§ 48.205(1m)

E. Criteria for holding AEM in physical custody

1) Probable cause exists to believe that

a. Adult is EM

§ 48.193(1)(c)

b. AEM exhibits habitual lack of self-control in use of AOD to severe degree

c. There is substantial risk that physical health of UC and child when born will be serious affected or endangered unless AEM taken into custody, and

d. AEM refusing or has refused AODA services or not making/has not made good-faith effort to participate in AODA services

§ 48.207(1m)

F. Places where AEM may be held in custody

1) Home of adult relative or friend of AEM

2) Licensed community-based residential facility, as defined in § 50.01(1g), if placement does not violate conditions of license

§ 48.203(3)

3) Hospital or physician's office if UC or AEM suffering from serious medical condition that requires prompt diagnosis or treatment

§ 48.207(1m)(d)
§ 48.203(4)

4) Place specified in § 51.15(2)(d), if AEM believed to be mentally ill, drug dependent, or developmentally disabled and exhibits conduct that constitutes a substantial probability of physical harm to self or others or substantial probability of physical impairment or injury to AEM and standards of § 51.15 are met

§ 48.207(1m)(e)
§ 48.203(5)

5) Approved public facility for emergency treatment of intoxicated person who has threatened, attempted, or inflicted physical harm on self or another and likely to inflict physical harm, or is incapacitated by alcohol or another drug

Committee Comment

6) Statute title (§ 48.207) states "nonsecure" custody. Some of the options listed appear to be restricted facilities

3. Notice of Rights

A. If child/Juv/EM taken into custody and delivered to intake worker, worker must advise child/Juv/EM of

§ 938.20(7)(a)

1) Right against self-incrimination and right to counsel if Juv possibly involved in delinquent act

§ 48.20(7)(a)
§ 48.203(6)(a)

2) Right to counsel if alleged CHIPS age 12 or older or AEM. See also **JV 17**, for right to counsel in ICWA case

§ 48.20(8), § 48.203(7)
§ 938.20(8)

B. If child/Juv/EM held in custody by intake worker, worker must advise of right to present and cross-examine witnesses at detention hearing and advise of time and place of detention hearing required under § 48.21/ § 938.21 and possible consequences of that hearing

§ 48.21(3)(d)
§ 48.213(2)(d)
§ 938.21(2)(c), (3)(d)

C. If custody hearing held, Ct must advise alleged delinquent; EM; parents, guardians, legal custodians, or Indian custodians of CHIPS; or JIPS of rights set forth at Sec. 5.G.5), *infra*

§ 48.243(1)
§ 938.243(1)

D. Before conferring with parent, AEM, or child/Juv during intake inquiry, intake worker must notify child/Juv, parents, and AEM as provided in § 48.243(1)/§ 938.243(1)

§ 48.243(3)
§ 938.243(3)

E. If child/Juv or AEM not present at custody hearing or intake conference, intake worker must make notification to child/Juv, parent, AEM, guardian, and legal custodian as in Sec. D. immediately above

1) Notice must be given orally in person or by telephone and in writing

2) Must allow sufficient time to prepare for plea hearing

4. Custody Intake Determination—Decision to Hold or Release

A. Custody intake decision may be made by

§ 48.067, § 938.067

1) Intake worker

2) Judge

§ 48.10, § 938.10

a. However, if recommendation to file petition made, citation issued, or informal disposition/deferred prosecution entered, Judge disqualified from participating further in proceedings

§ 48.19(1)(c)
§ 938.19(1)(c)

b. As part of a welfare of the child/Juv order

B. Release from custody by intake worker

§ 48.20(7)(b)
§ 938.20(7)(b)

1) Must make every effort to release child/Juv using

§ 48.205, § 938.205(1)

a. Statutory criteria for holding in physical custody

§ 48.06(1) or (2)
§ 938.06(1) or (2)

b. Judicial policies

§ 48.20(7)(c)
§ 938.20(7)(c)

2) Release of child/Juv may be to

a. Parent, guardian, legal custodian, or Indian custodian, if available, willing, and able to provide supervision

b. Responsible adult with appropriate counseling and warnings

c. Self, if 15 years or older, with appropriate counseling and warnings

§ 48.20(7)(c)2.
§ 938.20(7)(c)2.

d. Runaway home, if child/Juv is a runaway

§ 938.20(7)(c)1m.

e. DOC or Cty Dept, whichever has supervision of Juv, if Juv has violated terms of community supervision or aftercare supervision, a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in the intensive supervision program under § 938.534

§ 48.20(7)(d)
§ 938.20(7)(d)

3) Except in relinquishment cases, intake worker must immediately notify parent, guardian, legal custodian, and Indian custodian of

a. Time and circumstances of release

b. Person, if any, to whom child/Juv was released

C. Custody intake procedures

§ 48.067(1)
§ 938.067(1)

1) Custody intake screening must be available 24 hours a day, 7 days a week

§ 48.067(2)
§ 938.067(2)

2) Intake worker must interview, unless impossible, child/Juv taken into physical custody and not released

§ 48.20(7)(a)
§ 938.20(7)(a)

3) Intake worker required to advise of right to counsel, and if possibly involved in delinquent act, right against self-incrimination

§ 48.20(8), § 938.20(8)

4) If child/Juv held in custody, intake worker must notify

a. Parent, guardian, legal custodian, and Indian custodian

- Unless reason to believe notice would present imminent danger to child/Juv, or

- Unless parent has relinquished child

§ 48.21(3)(b)
§ 938.21(3)(b)

b. Any alleged delinquent or alleged JIPS or CHIPS age 12 or older

§ 48.20(8)

c. UC's GAL

D. Criteria for holding child/Juv in physical custody

§ 48.195(1m)
§ 48.205(1), § 938.205(1)

1) Probable cause exists to believe that child/Juv is within Juv Ct's jurisdiction, and

§ 48.195(1m)

a. Child is relinquished child, or

§ 48.205(1)(a)

b. In Ch 48 actions, child will commit injury to self or be subject to injury by others, or

§ 48.205(1)(am)

c. In Ch 48 actions, if child not held, he or she will be subject to injury by others, based on a determination under para. b. above, or finding under § 48.21(4) that if another child in home is not held, that child will be subject to injury by others, or

§ 938.205(1)(a)

d. In Ch 938 actions, Juv will commit injury to person or property of another, or

§ 48.205(1)(c)
§ 938.205(1)(c)

e. Child/Juv will run away or be taken away and would be unavailable for proceedings of

§ 48.205(1)(c)
§ 938.205(1)(c)

- Ct or its officers, or

§ 938.205(1)(c)

- DOA for revocation of community supervision or aftercare supervision, corrective sanctions, or SJO supervision, or action by DOC relating to a violation of a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in the intensive supervision program under § 938.534

§ 48.205(1)(b)
§ 938.205(1)(b)

f. Parent, guardian, legal custodian, or other responsible adult is

- Neglecting, refusing, unable, or unavailable to provide adequate supervision and care

- AND, services to ensure child's/Juv's safety and well-being not available or would be inadequate, or

§ 48.205(1)(bm)

g. In Ch 48 actions, child meets criteria in para. f., above, based on determination under para. f. or finding under § 48.21(4) that another child in home meets those criteria, or

§ 48.205(1)(d)

h. Child is EM and substantial risk to health of UC due to EM's habitual lack of self-control in use of AOD exhibited to a severe degree and EM refusing/has refused or not making good-faith effort to participate in AODA services, or

§ 938.208(6)

2) Probable cause exists to believe person is subject to Adult Ct jurisdiction under § 938.183(1) AND is under age 15

3) For criteria to hold AEM in custody see **Sec. 2.E.**, *supra*

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 48.207
§ 938.207

E. Places where a child/Juv may be held in nonsecure custody (for places where AEM may be held, see Sec. 2.F., *supra*; for places where child/Juv subject to ICWA may be held, see JV 17)

1) Home of parent, guardian, or relative

§ 48.207(1)(a), (b)
§ 938.207(1)(a), (b)

a. Except person making custody decision may not designate home of parent, guardian, or relative if parent, guardian, or relative convicted of 1st- or 2nd-degree intentional homicide of parent of child and conviction has not been reversed, set aside, or vacated UNLESS

- Person making custody decision determines by clear and convincing evidence that placement would be in best interests of child/Juv

- Person making custody decision shall consider wishes of child/Juv in making determination

§ 48.207(1)(c), (cm)
§ 938.207(1)(c), (cm)

2) Licensed foster home or group home, if placement does not violate conditions of license

§ 48.207(1)(d)
§ 938.207(1)(d)

3) Nonsecure facility operated by licensed child welfare agency

§ 48.02(17), § 938.02(17)
§ 938.22(2)(c)
§ 48.207(1)(e)
§ 938.207(1)(e)

4) Licensed private or public shelter care facility (includes a licensed holdover room)

§ 48.207(1)(f)
§ 938.207(1)(f)

5) Home of person not a relative or ICWA relative (*see* **JV 17**), provided placement does not exceed 30 days

a. Can be extended for additional 30 days by Ct if person has not had foster home license refused, revoked, or suspended within previous 2 years

§ 48.195, § 48.207(1)(g)
§ 938.207(1)(g)

§ 48.20(4), (4m)
§ 938.20(4)

6) Hospital or physician's office, if held because child/Juv/UC requires prompt diagnosis or treatment for serious physical condition, or is a relinquished child

§ 48.207(1)(h)
§ 938.207(1)(h)
§ 48.20(5), § 938.20(5)
Ch 51

7) Facility for emergency detention under Mental Health Act if held because

a. Believed to have mental illness or developmental disability or to be drug dependent AND

b. Substantial probability of physical harm to self or others, or

c. Very substantial probability of physical impairment or injury to self because of impaired judgment

§ 48.207(1)(i)
§ 938.207(1)(i)
§ 48.20(6), § 938.20(6)

8) Approved public treatment facility for emergency alcohol or other drug treatment if child/Juv is

a. Intoxicated and has threatened, attempted, or inflicted harm on self or others and is likely to inflict harm, or

b. Incapacitated by alcohol or another drug

§ 48.207(1)(k)
§ 938.207(1)(k)
§ 48.58

9) Children's home in Cty with a population of 750,000 or more

§ 48.207(1)(L)

10) Qualifying residential family-based treatment facility (QRFTF)

§ 48.207(3)

11) In Ch 48 actions, abused, or neglected child may be held in

a. Hospital

b. Foster home

c. Relative's home

d. Other appropriate medical or child welfare facility not primarily used for detention of delinquent Juvs

§ 48.208
§ 938.208

F. Additional criteria for holding child/Juv in Juv custody

§ 938.208(1)

1) In Ch 938 actions, probable cause exists to believe that Juv has committed delinquent act and presents substantial risk of

a. Harm to others, which is shown when there exists probable cause to believe Juv committed an offense

Appendix 2
Correctional Placement
Offenses

- That could lead to correctional placement. (See **Appendix 2** for list of offenses)
- That would be a felony for an adult, while possessing, using, or threatening to use a handgun, short-barreled rifle, short-barreled shotgun, or
- That Juv possessed or was armed with a handgun, short-barreled rifle, or short-barreled shotgun, or

b. Running away so as to be unavailable for Ct hearing or hearing for revocation proceedings

§ 938.208(5)

2) In Ch 938 actions, probable cause to believe Juv is delinquent, has run away from another Cty, and would run away from nonsecure custody pending return

a. May be held for not more than 24 hours except for one extension by Ct of 24 hours for good cause

- 24 hours commence after end of day decision to hold Juv was made

§ 938.208(2)

3) In Ch 938 actions, probable cause to believe Juv is fugitive from another state or has run away from Juv correctional facility or secured RCCCY and no reasonable opportunity to return Juv

§ 48.208(3)
§ 938.208(3)

4) In Ch 48 and Ch 938 actions, child/Juv consents in writing to be held for protection from imminent physical threat and protective order issued by Judge (under Ch 48) or by Ct (under Ch 938)

§ 48.208(4)
§ 938.208(4)

5) In Ch 48 and Ch 938 actions, probable cause to believe child/Juv placed in nonsecure custody has run away or committed delinquent act and no other suitable alternative exists

§ 938.208(6)

6) Probable cause exists to believe person is subject to Adult Ct jurisdiction under § 938.183(1) AND is under age 15

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 48.208
§ 938.208

G. Places where a child/Juv may be held in secure custody

§ 48.208, § 938.208

§ 938.223, § 938.222

1) Juv detention facility in Wis (public or private) or Minnesota (public only)

§ 48.209, § 938.209

2) Juv portion of Cty jail (see **Sec. 4.H.**, ***infra***)

§ 938.209(2m)(a)

3) Municipal lock-up facility (see **Sec. 4.I.**, ***infra***)

§ 48.209, § 938.209

H. Additional criteria required for holding child/Juv in Jail

1) Criteria for holding child/Juv in physical custody under **Sec. D.** above and in secure custody under **Sec. F.** above must first be met

§ 48.209(1), § 938.209(1)

2) No other Juv detention facility approved by DOC or Cty available AND

a. Jail meets standards for Juv detention facility

b. Child/Juv in room separated and removed from adults

c. Child/Juv not held in cell for administrative or disciplinary segregation of adults

d. Adequate supervision provided

e. Ct reviews status of child/Juv every 3 days

§ 48.299(5)
§ 938.299(5)(a)

- Review may be by telephone conference or live audiovisual means unless good cause to contrary shown OR

§ 938.299(5)(b)

- If objection by Juv or prosecutor in Ch 938 case, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

§ 48.209(2)
§ 938.209(1)(b)

3) Child/Juv presents substantial risk of physical harm to others in Juv detention facility as evidenced by previous acts or attempts that can only be avoided by transfer to jail, AND

a. Child/Juv given hearing and transferred only by order of Ct

b. Jail meets standards above in para. 2)

c. Ct reviews status of child/Juv every 3 days

§ 48.299(5)
§ 938.299(5)(a)

- Review may be by telephone or live audiovisual means unless good cause to contrary shown

§ 938.299(5)(b)

- If objection by Juv or prosecutor in Ch 938 case, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

§ 938.209(2m)(a)

I. Criteria for holding Juv in a municipal lock-up facility

1) All the following must be met

a. Juv alleged to have committed a delinquent act

b. DOC approved facility as suitable for holding Juvs

c. Juv held not more than 6 hours while waiting for hearing

d. There is sight and sound separation between Juv and any adult held in facility

e. Juv held for investigative purposes only

5. Custody Hearing for Child/Juvenile

§ 48.21(1)
§ 938.21(1)

A. Purpose—to determine whether child/Juv will continue to be held in custody

§ 48.20(2)(ag)
§ 938.20(2)(ag)

1) Person taking child/Juv into custody to make every effort to release child/Juv immediately to parent, guardian, legal custodian, or Indian custodian

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

B. Time periods

§ 48.21(1)

1) In Ch 48 actions, hearing must be held within 48 hours of time decision to hold was made, excluding Saturdays, Sundays, and legal holidays

§ 48.21(1)(b)

a. Child may be held an additional 72 hours if no petition filed but Ct determines probable cause that child is in imminent danger to self or others, or that child is without adequate supervision or care, or, if child is EM, that there

is substantial risk to health of unborn child

§ 938.21(1)

2) In most Ch 938 actions, hearing must be held within 24 hours after end of day decision to hold Juv was made, excluding Saturdays, Sundays, and legal holidays

§ 938.355(6d)(d)

3) If Juv held under short-term detention, hearing must be conducted within 72 hours of time decision to hold was made

§ 48.21(1)(c)
§ 938.21(1)(c)

4) If child/Juv has been held in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, then Ct must receive by custody hearing, or within 30 days after placement if not available at custody hearing, standardized assessment and recommendation from qualified individual addressing

a. Whether proposed placement will provide child/Juv with most effective and appropriate level of care in least restrictive environment

b. How placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan

c. Reasons why child's/Juv's needs can or cannot be met by child's/Juv's family or in foster home. Shortage or lack of foster homes is not an acceptable reason for determining that child's/Juv's needs cannot be met in a foster home

d. Placement preference of family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not recommended by the qualified individual, why that recommended placement is not preferred

§ 48.02(14k)
§ 938.02(14m)
42 USC 675a(c)(1)(D)

Note: "Qualified individual" is defined as a trained professional or licensed clinician who is not an employee of the State agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the State.

§ 48.02(17t)
§ 938.02(17t)

"Standardized assessment" means assessment, using tool determined by DCF, of strengths and needs of child/Juv to determine appropriateness of a placement in a residential care center, group home, or shelter care facility certified as qualified residential treatment program under § 48.675. The definition under § 48.02(17t) does not apply to § 48.62(8)(b)

C. Notice of custody hearing

§ 48.20(8), § 938.20(8)
§ 48.203(7)

1) Given by intake worker

Comment
§ 48.195(2)

2) Because of right of anonymity, notice requirements in relinquishment cases would seem to be different, but statutes do not specifically address this

§ 48.21(1)(a)
§ 938.21(1)(a)

D. Custody hearing cannot be waived

RMC Form JD-1712

E. Party may waive *right to participate* in custody hearing

§ 938.21(2)(am)

1) Juv in nonsecure custody may waive right to participate in custody hearing

2) Alleged delinquent Juv or alleged JIPS under § 938.13(12) or (14) held in nonsecure custody may waive right to participate in hearing in writing

a. Rehearing required upon request of Juv or any other interested party for good cause shown

b. Rehearing required if Juv transferred to secure custody

§ 48.21(3)(am)
§ 938.21(3)(am)

3) Parent, guardian, legal custodian, or Indian custodian of alleged CEM, CHIPS, or JIPS (nondelinquency) held in nonsecure custody may waive right to participate in hearing in writing

/

a. Rehearing required upon request of any interested party on good cause shown

4) Right to counsel—see **JV 2, Sec. 2**

F. Requirements for filing for child/Juv custody hearing

§ 48.21(1)(a)
§ 938.21(1)(a)

1) In a delinquency case, a new petition, request to extend, revise, or change placement, or statement of reasons for holding Juv in custody must be filed by the time of custody hearing. In a CHIPS case, a new petition or statement of reasons for holding child in custody must be filed by the time of custody hearing

2) EXCEPT that written statement of reasons for holding child/Juv in custody may be substituted when

§ 48.19(1)(b)
§ 938.19(1)(b)

a. Capias issued by Judge (under Ch 48) or by Ct (under Ch 938)

§ 938.355(6d)(d)

b. Juv held in short-term detention

- See **JV 11, Sec. 11**, for discussion of short-term detention

c. Law enforcement officer believes on reasonable grounds that

§ 48.19(1)(d)2.
§ 938.19(1)(d)2.

- Capias or warrant for child's/Juv's apprehension has been issued in another state, or

§ 938.19(1)(d)6.

- Juv violated terms of Ct-ordered supervision, community supervision, or aftercare supervision, or a condition of Juv's placement in a Type 2 Juv correctional facility or a Type 2 RCCCY, or a condition of Juv's participation in the intensive supervision program under § 938.534

§ 48.21(4)(a)
§ 938.21(4)(a)
§ 48.19(1)(d)7.
§ 938.19(1)(d)7.

- Child/Juv violated conditions of Ct order regarding continuation of temporary custody, or

- Child/Juv violated conditions of order for temporary physical custody by intake worker

§ 48.19(1)(d)2.
§ 938.19(1)(d)2.

d. Child/Juv has run away from another state

3) If no petition filed by time of custody hearing

§ 938.21(1)(b)

a. In Ch 938 action, one 48-hour extension from time of hearing may be granted

§ 48.21(1)(b)

b. In Ch 48 action, one 72-hour extension from time of hearing may be granted excluding Saturdays, Sundays, and legal holidays

c. Extension can be granted only after hearing upon showing of probable cause to believe that

- Child/Juv is imminently dangerous to self or others, or

§ 48.21(1)(b)
§ 938.21(1)(b)

- Parent, guardian, legal custodian, or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care, or

- Child is EM and there is substantial risk to health of UC due to EM's habitual lack of self-control in use of AOD exhibited to a severe degree

4) Child/Juv must be released from custody, when

§ 48.21(1)(a)
§ 938.21(1)(a)

a. Petition not filed by time of custody hearing, and

§ 48.21(1)(b)
§ 938.21(1)(b)

b. Ct or CCC does not grant extension for filing petition, or

§ 48.21(1)(bm)
§ 938.21(1)(b)

c. Petition not filed within the extension period

5) Copies of petition must be given to

§ 938.21(2)(b)

a. Alleged delinquent or runaway Juv

§ 48.21(3)(b)
§ 938.21(3)(b)

b. Parent, guardian, legal custodian, or Indian custodian of alleged CHIPS or JIPS or of CEM in alleged UCHIPS

§ 48.21(3)(b)
§ 938.21(3)(b)

c. Alleged CHIPS or JIPS age 12 or older

§ 48.21(3)(b)

d. If CEM, to UC's GAL

G. Procedures at custody hearing

§ 48.21(1), § 938.21(1)

1) Hearing conducted by Ct

§ 48.29(1), § 938.29(1)

a. No right of substitution

§ 48.299(5)

b. For Ch 48 cases, upon request of any party, unless good cause to contrary shown

- Hearing may be held on record by telephone or live audiovisual means
- Testimony may be received by telephone or live audiovisual means

§ 938.325

a. For Ch 938 cases, proceedings may be conducted by telephone or live audiovisual means, unless good cause to the contrary is shown

§ 938.299(5)(b)

- If objection by Juv or prosecutor, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

§ 938.325

- Access shall be provided to persons entitled to attend by loudspeaker or live audiovisual means or, upon request to Ct, by telephone without charge

§ 48.299(6)
§ 938.299(6)

c. If man appears and alleges paternity of the child/Juv, Ct shall refer matter to State or to Atty responsible for support enforcement under § 59.53(6)(a) for determination whether action should be brought for purpose of determining the paternity of child/Juv

- See Procedure in **JV 6, Plea Hearing and Pretrial Issues**, this volume, for further discussion

§ 48.20(8), § 938.20(8)
§ 938.21(2)(b)
§ 48.21(3)(b)
§ 938.21(3)(b)

2) Notice of hearing given by intake worker to child/Juv and parent, guardian, legal custodian, Indian custodian, and UC's GAL when decision made to hold in custody

§ 48.21(1)(a)
§ 938.21(1)(a)

a. Parent not at hearing entitled to rehearing on good cause shown

§ 48.21(3m)
§ 938.21(3m)

3) If child/Juv in custody committed act that injured or damaged person or property of another

a. Ct to attempt to give notice, before hearing, to parents, of possibility of disclosure of the following for use in civil actions for damages against child/Juv or parents

- Identity of child/Juv and parents
- Child's/Juv's police records
- Outcome of proceedings against child/Juv

§ 895.035

b. Ct to attempt to give notice, before hearing, of parents' potential liability for acts of their child/Juv

§ 48.21(3m)
§ 938.21(3m)

c. If Ct unable to provide notice before commencement of hearing, must provide Child's/Juv's parents specified information in writing as soon as possible after hearing

§ 938.21(1m)
§ 165.84(7)(ab)

4) If Juv is taken into custody for violation that would be a violent crime as defined in § 165.84(7)(ab), then Ct must determine whether a biological specimen has been obtained from Juv under § 165.84(7)

a. If specimen has not been obtained, Ct shall direct that specimen be taken

b. If Ct requires specimen, Ct must advise that Juv may request expungement under § 165.77(4)

§ 48.21(3)(d)
§ 938.21(2)(c), (3)(d)

5) Ct must advise alleged delinquent, Juv who is habitually truant from home, and parent, guardian, legal custodian, or Indian custodian of alleged CHIPS or JIPS of the following before commencement of hearing

a. Allegations that have been or may be made, and

b. Nature and possible consequences of custody hearing as compared to possible future hearings, and

c. Right to confront, cross-examine, and present witnesses, and

§ 48.23(2g)
§ 938.23(2g)

d. Right to counsel, for parent or Indian custodian, if ICWA case

e. In delinquency and JIPS cases only

§ 938.18

- Potential of waiver to Adult Ct if applicable

§ 938.23

- Juv's right to counsel as provided by statute (see **JV2**—Right to Counsel)

- Right to remain silent

§ 48.21(3)(e)
§ 938.21(2)(d), (3)(e)

6) If child/Juv, parent, guardian, legal custodian, or Indian custodian not represented by counsel, rehearing must be held as soon as possible upon request of counsel or GAL

SCR 71.01

7) Hearing must be on record

§ 48.299(4)(b)
§ 938.29/9(4)(b)

8) Common law and statutory rules of evidence not binding

a. Ct must

- Admit all testimony having reasonable probative value

— Re: AIDS testing and results, see §§ 901.05 and 938.296

- Exclude immaterial, irrelevant, or unduly repetitious testimony

- Give effect to rules of privilege recognized by law

- Apply basic principles of relevancy, materiality, and probative value of proof of all questions of fact

- Note in record objections to evidentiary offers and offers of proof of evidence not admitted

b. Ct may admit hearsay evidence if it has demonstrable circumstantial guarantees of trustworthiness

§ 48.299(1)
§ 938.299(1)

9) If public hearing not demanded, general public excluded from custody hearing

a. Persons who may be present

- Parties

- Counsel/GAL/CASA

§ 48.299(1)(ag)
§ 938.299(1)(ag)

- Child's/Juv's foster parent or physical custodian, who may be excluded from portion of hearing dealing with sensitive personal information or if exclusion in child's/Juv's best interest

- Witnesses

- Anyone requested by a party and approved by Ct

- Anyone Ct finds to have a proper interest in case or work of Ct, including Attys or persons engaged in bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

— Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

— Representative of news media who wishes to report news without revealing identity of Juv involved must be permitted to attend

§ 48.299(3)

b. Child must be present unless

- Ct finds child under 7 years too young to comprehend hearing and in child's best interests to be excluded from entire hearing

§ 48.299(1)(b), Ch 785
§ 938.299(1)(b)

c. Except as provided in § 48.375(7)(e), § 48.396, and § 938.396, or when a public hearing is held, anyone who divulges information that would identify child/Juv/EM or family subject to contempt of Ct

§ 938.299(1)(b)

- Does not preclude a victim from commencing a civil action

§ 938.299(1)(ar)

10) In addition to provisions in para. 9) above, the following may attend proceedings under Ch 938

§ 938.299(1)(am)

a. Victim, victim's family member, and representative of victim's organization may attend any hearing for alleged act against victim, but may be excluded from portion of hearing dealing with sensitive personal information not directly related to alleged act

b. General public may attend any hearing for Juv charged with felony who was previously found delinquent

Appendix 1
SJO Offenses

c. General public may attend any hearing for Juv charged with violation

- That would be a felony if committed by an adult, and Juv has prior adjudication of delinquency of record and unreversed

- That is an SJO violation

— See **Appendix 1**, SJO Offenses, for list of violations

- Ct *shall* exclude public if victim of sexual assault objects to public hearing and *may* do so during portion of hearing dealing with sensitive personal matters of Juv and family

§ 48.23, § 938.23

11) Right to counsel

See **JV 2, Sec. 2**

§ 48.299(2m)
§ 938.299(2m)

12) Use of restraints (shackling)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m) or § 938.299(2m). *See infra* **Appendix 13**

6. Custody Determination and Order

§ 48.21(1)
§ 938.21(1)

A. In a delinquency case, if a petition, request to extend, revise, or change placement, or a statement of reasons for holding Juv in custody is filed, Ct may continue to hold Juv in physical custody. In CHIPS case, if petition or statement of reasons for holding child in custody is filed, the Judge or CCC may continue to hold child in physical custody

1) Ct must:

§ 48.205(1)
§ 938.205(1)

a. Find that probable cause exists to believe that child/Juv is within Ch 48 Ct's or Ch 938 Ct's jurisdiction

§ 48.21(5)(b)1.
§ 938.21(5)(b)1.

b. Find that continued placement of child/Juv in home would be contrary to the welfare of child/Juv

c. Find whether person who took child/Juv into custody and intake worker have made reasonable efforts to prevent removal of child/Juv from home, while assuring child/Juv health and safety are paramount concerns, unless reasonable efforts not required

d. Find whether person who took child/Juv into custody and intake worker have made reasonable efforts to make it possible for child/Juv to return safely home

e. If child/Juv is under supervision of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more), order child/Juv into placement and care responsibility of that agency and assign it primary responsibility for providing services

§ 48.21(5)(b)2m.
§ 938.21(5)(b)2m.

f. Make findings as to whether intake worker has made reasonable efforts to place child/Juv in placement that enables sibling group to remain together, unless Judge or CCC in Ch 48 proceeding (or Ct in Ch 938 proceeding) determines that joint placement would be contrary to safety or well-being of child/Juv or any of those siblings, in which case Judge or CCC (or Ct) shall order Cty Dept (or DCF in Cty with population of 750,000 or more in Ch 48 proceeding) or responsible agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between child/Juv and siblings, unless Judge or CCC (or Ct) determines that such visitation or interaction would be contrary to safety or well-being of child/Juv or any of those siblings

§ 48.21(5)(b)1m.
§ 938.21(5)(b)1m.

2) If for good cause shown, sufficient information not available for Judge or CCC to make a finding as to whether reasonable efforts were made to prevent removal of child/Juv from home, Ct must

a. Make finding whether reasonable efforts were made to make it possible for child/Juv to return safely home, and

b. Order primary agency to file with Ct sufficient info to make finding as to whether reasonable efforts were made **before removal** to prevent removal of child/Juv from home no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after date on which order is granted

§ 48.21(5)(b)2.
§ 938.21(5)(b)2.

3) Placement

a. Ct approves placement recommended by intake worker, OR

b. Ct has given bona fide consideration to intake worker and all parties' placement recommendation(s) if Ct places child/Juv out of home in placement other than that recommended by intake worker

§ 48.21(5)(b)2g.
§ 938.21(5)(b)2g.

c. If placement is in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, then Ct must make a finding as to each of the following, after consideration of the standardized assessment and recommendation of the qualified individual under § 48.21(1)(c)/§ 938.21(1)(c):

- Whether needs of child/Juv can be met through placement in foster home
- Whether placement of child/Juv in an RCCCY, group home, or shelter care facility certified under § 48.675 provides most effective and appropriate level of case for child/Juv in least restrictive environment
- Whether placement is consistent with short-term and long-term goals for child/Juv, as identified in permanency plan
- Whether the Judge or CCC in Ch 48 proceeding (or Ct in Ch 938 proceeding) approves or disapproves the placement

§ 48.21(5)(cm)
§ 938.21(5)(cm)

d. If standardized assessment and recommendation are not available at time of custody order, then Judge or CCC in Ch 48 proceeding (or Ct in Ch 938 proceeding) shall defer making findings under § 48.21(5)(b)2g./§ 938.21(5)(b)2g. Judge or CCC (or Ct) shall issue an order no later than 60 days after date on which placement is made

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

4) If Ct finds reasonable efforts not required under §§ 48.355(2d)1.–5. and 938.355(2d)(b)1.–4., Ct must also

§ 48.21(5)(b)3.
§ 938.21(5)(b)3.

a. Find that Dept or agency primarily responsible for providing services is not required to make reasonable efforts with respect to parent to make it possible for child/Juv to return safely home, AND

§ 48.21(5)(d)
§ 938.21(5)(d)

b. Schedule hearing within 30 days after "reasonable efforts not required" finding to determine permanency goal and, if applicable, any concurrent permanency goals for child/Juv

§ 48.21(5)(c)
§ 938.21(5)(c)

5) All findings shall be made on case-by-case basis, based on circumstances specific to child/Juv and SHALL document or reference specific information on which findings are based in custody order

§ 48.21(5)(c)
§ 938.21(5)(c)

A custody order that merely references findings without documenting or referencing specific information in custody order *or* an amended custody order that retroactively corrects an earlier noncomplying custody order is not sufficient to comply with ASFA as adopted in Wis

§ 48.21(5)(a)
§ 938.21(5)(a)

B. Order to hold child/Juv in custody must contain the above findings and be in writing

§ 48.21(6)(a)
§ 938.21(6)

C. Ct may amend order if noncompliance with ordered conditions

1) Upon notice

2) Placement may be changed

3) Child/Juv may be transferred to secure custody after hearing if secure detention criteria are met

4) Amended order or amendment must be in writing and document reasons for amendment

§ 48.21(6)(b)

5) If a child is transferred to RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, the qualified individual shall conduct a standardized assessment and the intake worker or agency primarily responsible for providing services under the custody order shall include it and the recommendation of the qualified individual who conducted the standardized assessment, including all of the following information with the notice under § 48.21(6)(a) or, if not available at that time, submit it to the Ct and all persons who received the notice no later than 30 days after the date on which the transfer is made:

§ 48.21(1)(c)

a. Whether placement of child in RCCCY, group home, or shelter care facility certified under § 48.675 provides most effective and appropriate level of case for child in the least restrictive environment

b. How placement is consistent with the short-term and long-term goals for child, as specified in permanency plan

c. Reasons why child's needs can or cannot be met by child's family or in foster home

d. Placement preference of family permanency team under § 48.38(3m) and, if that preference is not recommended by the qualified individual, why that recommended placement is not preferred

§ 48.21(6)(b)

No later than 60 days after the date on which the transfer is made, the Judge or CCC shall issue an order making the findings under § 48.21(5)(b)2g.

§ 48.208
§ 938.208

D. Child/Juv may be held in Juv custody if criteria in Sec. 4.D., *supra*, are met and one or more criteria set forth at Sec. 4.F., *supra*, are met

§ 48.209
§ 938.209

E. Child/Juv may be held in Cty jail if criteria in Secs. 4.F. and 4.H., *supra*, are met

§ 48.21(3)(e)
§ 938.21(2)(d), (3)(e)

F. Rehearing of custody order

1) If child/Juv, parent, guardian, legal custodian, or Indian custodian not represented by counsel at custody hearing and custody is continued

a. Subsequently retained or appointed counsel may request rehearing

§ 48.21(3)(e)
§ 48.213(2)(e)

- If EM without counsel at hearing, then EM may request hearing through GAL or counsel subsequently appointed or retained

b. Hearing must take place as soon as possible

2) All custody orders subject to rehearing for good cause shown

§ 48.21(1)(a)
§ 938.21(1)(a)

G. Review of custody order

§ 757.69(8)

1) CCC custody order reviewed by Juv Ct Judge on motion of any party

§ 48.21(5m)
§ 938.21(5m)

H. Effective period of custody order

Order to hold child/Juv in custody remains in effect until

1) Dispositional order is granted

2) Consent decree is entered into

3) Petition is withdrawn or dismissed, or

4) Order is modified or terminated by further order of Ct

I. Predispositional change in placement

§ 48.217(1)
§ 938.217(1)

1) 10-day notice of change-in-placement hearing under § 48.217(1)/§ 938.217(1)

a. Who may request change:

- Intake worker
- Agency primarily responsible
- DA
- Corp counsel

§ 48.217(1)(a)2.
§ 938.217(1)(a)2.

NOTE: Change in placement from in-home to out-of-home can only be made as per § 48.21(6)/§ 938.21(6).

b. Notice—information required

§ 48.217(1)(b)
§ 938.217(1)(b)

- Written notice to child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, foster parent or custodian per § 48.62(2), and CAS

§ 48.217(1)(b)2.
§ 938.217(1)(b)2.

- Notice shall contain
  - — Name and address of new placement
  - — Reasons for change of placement
  - — Whether new placement is certified as qualified residential treatment program under § 48.675
  - — Statement why new placement is preferable
- Person sending notice shall file notice with Ct on same day

§ 48.217(1)(b)3.
§ 938.217(1)(b)3.

c. If request is for placement into RCCCY, group home, or shelter care facility certified under § 48.675, the following information must be provided at the time of the notice, or if not available, no later than 10 days after the notice is filed: standardized assessment and recommendation from qualified individual addressing

- Whether proposed placement will provide child/Juv with most effective and appropriate level of care in least restrictive environment

- How placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan

- Reasons why child's/Juv's needs can or cannot be met by child's/Juv's family or in foster home. Shortage or lack of foster homes is not an acceptable reason for determining that child's/Juv's needs cannot be met in foster home

- Placement preference of family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not placement recommended by the qualified individual, why that recommended placement is not preferred

§ 48.217(1)(b)4.
§ 948.217(1)(b)4.

- If, for good cause shown, the above information cannot be provided within the 10 days, intake worker or agency responsible shall submit it no later than 30 days after date on which placement is made

42 USC 675a(c)(1)(D)
§ 48.02(14k)
§ 938.02(14m)

Note: "Qualified individual" is defined as a trained professional or licensed clinician who is not an employee of the State agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the State.

§ 48.02(17t)
§ 938.02(17t)

"Standardized assessment" means an assessment, using a tool determined by DCF, of the strengths and needs of a child/Juv to determine appropriateness of a placement in a residential care center, group home, or shelter care facility certified as qualified residential treatment program under § 48.675. The definition under § 48.01(17t) does not apply to § 48.62(8)(b)

§ 48.217(1)(c)
§ 938.217(1)(c)

d. Hearing—when required

- Any person receiving notice, except CASA, may obtain hearing by filing an objection with the Ct within 10 days after notice is sent and filed with Ct

§ 48.217(1)(c)
§ 938.217(1)(c)

- If objection timely filed with Ct, Ct will hold hearing before changing placement. Ct will provide notice at least 3 days before hearing. If all parties consent, then Ct may proceed immediately with the hearing

§ 48.217(1)(c)
§ 938.217(1)(c)

- If no objection filed within 10 days, the Ct shall enter order for change of placement as proposed in notice

§ 48.217(1)(c)
§ 938.217(1)(c)

- Placements cannot be changed until after notice is sent unless the Ct receives written waivers from parties listed in § 48.217(1)(c)/§ 938.217(1)(c)

§ 48.217(1)(d)
§ 938.217(1)(d)

e. Hearing—when not required

Changes of placement authorized in temporary physical custody order may be made immediately if notice given per § 48.217(1)(b)/§ 938.217(1)(b). No hearing needed, except when objection filed by person alleging that new information affects advisability of order

§ 48.217(1)(e)
§ 938.217(1)(e)

f. Contents of order

If Ct changes placement from outside the home to another placement outside the home, the change-in-placement order shall contain necessary information per § 48.217(2v)(a), (b), and (c)/ § 938.217(2v)(a), (b), and (c)

§ 48.217(2)(a)
§ 938.217(2)(a)

2) Emergency change in placement

a. If immediate change of placement outside the home is necessary and a custody order is in place, the intake worker may remove the child/Juv to new placement, regardless of authorization in existing order and without prior notice

§ 48.217(2)
§ 938.217(2)

b. Notice will be sent to child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, foster parent or custodian per § 48.62(2), and CASA, within 48 hours after emergency change

c. Any party receiving notice may demand hearing

d. In emergency situations, child/Juv can be placed in shelter care facility for no longer than 20 days, or in any other placement authorized under §§ 48.207, 48.208, 48.209/§§ 938.207, 938.208, 938.209

§ 48.217(2)(b)1.
§ 938.217(2)(b)1.
§ 48.217(1)(b)3.
§ 938.217(1)(b)3.

e. If emergency change in placement under § 48.217(2)(a)/§ 938.217(2)(a) results in a child/Juv being placed in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, the qualified individual shall conduct a standardized assessment, and intake worker or agency primarily responsible for providing services under temporary physical custody order shall submit it and recommendation of qualified individual who conducted standardized assessment, including the following information with the notice under § 48.217(2)(a)/§ 938.217(2)(a) or, if not available at that time, and except as provided under § 48.217(2)(b)2./ § 938.217(2)(b)2., no later than 10 days after the filing of that notice

- Whether proposed placement will provide child/Juv with the most effective and appropriate level of care in the least restrictive environment

- How placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan

- Reasons why the child's/Juv's needs can or cannot be met by the child's/Juv's family or in foster home. Shortage or lack of foster homes is not an acceptable reason for determining that child's/Juv's needs cannot be met in foster home

- Placement preference of the family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not recommended by the qualified individual, why that recommended placement is not preferred

§ 48.217(2)(b)2.
§ 938.217(2)(b)2.

If, for good cause shown, the above information cannot be provided within 10 days, intake worker or agency responsible shall submit it no later than 30 days after date on which placement is made

§ 48.217(2m)(a)
§ 938.217(2m)(a)

3) Request for change in placement by others

a. Who may request under § 48.217(2m)/ § 938.217(2m): child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, expectant mother, or UC's GAL

b. Information required:

- Name and address of new placement

- What new information affects advisability of current placement

c. Request must be submitted to Ct

d. Ct may also propose change in placement on its own motion

§ 48.217(2m)(a)2.
§ 938.217(2m)(a)2.

NOTE: Change in placement from in-home to out-of-home can only be made as per § 48.21(6)/§ 938.21(6)

§ 48.217(2m)(b).
§ 938.217(2m)(b)

e. Hearing—when required

- Ct must hold hearing before ordering change in placement requested or proposed, if the proposal states new information is available that affects advisability of current placement. A hearing is not required if written waivers of objection to proposed change are signed by all persons entitled to notice, other than CASA, and the Ct approves

- If hearing is scheduled, the Ct shall notify child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, foster parent or custodian per § 48.62(2), responsible agency, DA or Corp counsel, and CASA. Copy of the request/proposal must be attached to the notice

§ 48.217(2m)((b)3.
§ 938.217(2m)(b)3.

- If change in placement results in child/Juv being placed in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, the qualified individual shall conduct a standardized assessment and the intake worker or agency primarily responsible for providing services under a temporary physical custody order shall submit it and the recommendation of the qualified individual who conducted the standardized assessment, including the following information, to Ct and to all persons who are required to receive the notice under § 48.217(2m)(b)2./§ 938.217(2m)(b)2., no later than the hearing or, if not available by that time, no later than 30 days after date on which placement is made

§ 48.217(1)(b)3.
§ 938.217(1)(b)3.

— Whether proposed placement will provide child/Juv with the most effective and appropriate level of care in the least restrictive environment

— How placement is consistent with short-term and long-term goals for child/Juv, as specified in the permanency plan

— Reasons why child's/Juv's needs can or cannot be met by the child's/Juv's family or in a foster home. Shortage or lack of foster homes is not acceptable reason for determining that child's/Juv's needs cannot be met in foster home

— Placement preference of the family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not recommended by the qualified individual, why that recommended placement is not preferred

- The matter can proceed immediately to a hearing if all parties agree

§ 48.217(2m)(c)
§ 938.217(2m)(c)

f. Findings for order:

- If Ct changes placement from outside the home to another placement outside the home, the change in placement order shall contain necessary information per § 48.217(2v)(a), (b), and (c)/§ 938.217(2v)(a), (b), and (c)

§ 48.217(2m)(c)3.

- If Ct changes child's placement to RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, then Ct shall, no later than 60 days after placement is made, issue an order making all of the findings required under § 48.217(2v)(d)1. (see below), the answers to which do not affect whether the placement may be made, after considering the standardized assessment and the recommendation of the qualified individual who conducted the standardized assessment

§ 48.217(2v)(d)1.

— Whether needs of child can be met through placement in foster home

— Whether placement of child in RCCCY, group home, or shelter care facility certified under § 48.675 provides most effective and appropriate level of care for child in least restrictive environment

— Whether the placement is consistent with short-term and long-term goals for child, as specified in permanency plan

— Whether Ct approves or disapproves of the placement

§ 48.217(2r)
§ 938.217(2r)

NOTE: If the change of placement would remove child/Juv from foster home or other placement with a physical custodian per § 48.62(2), the foster parent or physical custodian shall have a right to be heard by making either a written or oral statement before the hearing. Foster parent or other physical custodian is not a party, unless there is a basis other than notice and right to be heard.

4) Change in placement based on homicide of parent

§ 48.217(3)(a)
§ 938.217(3)(a)

a. The Ct cannot change the child's/Juv's placement to placement in the home of a person who has been convicted under § 940.01 or § 940.05 of homicide of the parent of the child/Juv, if the conviction has not been reversed, set aside, or vacated

§ 48.217(3)(b)
§ 938.217(3)(b)

b. If a parent, who has placement, is convicted under § 940.01 or § 940.05 of homicide of the other parent, the Ct shall change placement outside the home of the parent on petition of the child/Juv, child's/Juv's counsel or GAL, guardian or legal custodian, the agency responsible for providing services under the temporary physical custody order, DA or Corp counsel, or Ct on its own motion

§ 48.217(3)(c)
§ 938.217(3)(c)

c. Neither of above provisions apply if Ct finds by clear and convincing evidence that the placement is in the best interest of the child/Juv. Ct shall also consider the child's/Juv's wishes

§ 48.217(6)
§ 938.217(6)

5) Effective period of change-in-placement order

Remains in effect until

a. Disposition order is granted

b. Consent decree is entered into

c. Petition is withdrawn or dismissed, or

d. Modified or terminated by further order of Ct

§ 48.213

7. Custody Hearing for AEM

A. Purpose—to determine whether AEM shall continue to be held in custody under criteria of § 48.205(1m)

B. Hearing: When held, by whom

§ 48.213(1)

1) Hearing conducted by Judge or CCC

2) Hearing must be held within 48 hours after time decision to hold AEM made, excluding Saturdays, Sundays, and legal holidays

a. If no timely hearing, then AEM released, except as provided in **Sec. C.** below

C. Petition

1) Must be filed before hearing, unless AEM in custody under a capias or warrant, or for violation of a prior AEM order

§ 48.213(1)(b)

2) If no petition filed before hearing, AEM released

a. Except that Judge or CCC may approve custody for additional 72 hours (excluding Saturdays, Sundays, and legal holidays) if facts presented at hearing establish probable cause that § 48.205(1m) criteria for custody exist. See criteria at **Sec. 2.E.** above

D. Waiver/notice of custody hearing

§ 48.213(2)(b)

1) AEM may waive right to participate in custody hearing

a. Rehearing granted at request of any interested party for good cause

§ 48.213(2)(c)
§ 48.203(7)

2) Notice of hearing given to AEM and UC's GAL, by intake worker. Notice shall include

a. Reasons for holding AEM in custody

b. Time and place of detention hearing

c. Nature and possible consequences of detention hearing

d. Right to present and cross-examine witnesses

§ 48.213(2)(c)

3) Copy of petition given to AEM and UC's GAL before hearing begins

§ 48.213(2)(d)

4) Before commencement of hearing, Ct shall inform AEM and UC's GAL of following:

a. Allegations that have been made or may be made

b. Nature and possible consequences of the custody hearing as compared to possible future hearings

c. Right to counsel under § 48.23

d. Right to present, confront, and cross-examine witnesses

§ 48.213(3)

E. Determination of custody

§ 48.213(3)(a)

1) If criteria for custody under § 48.205(1m) are met, Ct or CCC may order as follows

a. Release AEM under reasonable restrictions necessary to ensure the safety of UC and child when born, including

- Restrictions on travel
- Restrictions on association with other persons and places of abode
- Condition that AEM return to custody as requested
- Acceptance by AEM of supervision by an agency agreeing to supervise AEM

§ 48.213(3)(b)
§ 48.207(1m)

b. Order AEM held at any of following

- Home of adult relative or friend of AEM
- Licensed community-based residential facility, as defined in § 50.01(1g), if placement does not violate conditions of license
- Hospital or physician's office if UC or AEM suffering from serious medical condition that requires prompt diagnosis or treatment

§ 48.203(4)

- A place specified in § 51.15(2)(d), if AEM believed to be mentally ill, drug dependent, or developmentally disabled and exhibits conduct that constitutes a substantial probability of physical harm to self or others or substantial probability of physical impairment or injury to AEM and standards of § 51.15 are met

§ 48.203(5)

- An approved public facility for emergency treatment of intoxicated person who has threatened, attempted, or inflicted physical harm on self or another and likely to inflict physical harm, or is incapacitated by alcohol or

another drug

Committee Comment

- Sec. 48.207 title states "nonsecure" custody. Some of the options listed appear to be secured facilities

§ 48.213(2)(e)

F. Request for rehearing

1) If AEM is continued in custody after hearing, AEM may request a rehearing

a. If AEM without counsel at the hearing, then AEM may request rehearing through counsel subsequently appointed or retained. Rehearing shall take place as soon as possible

b. If AEM represented by counsel at hearing resulting in custody, then rehearing shall take place upon a showing of good cause

G. Right to counsel of AEM

§ 48.23(2m)

1) *See* **JV 2, Sec. 2.D.**

§ 48.205(1m)

H. Form of custody order

§ 48.213(4)

1) All orders to hold an AEM in custody shall

a. Be in writing

b. List reasons and criteria forming basis for decision

§ 48.213(5)

2) Orders may be amended at any time, upon notice, to change form of custody for failure of AEM to conform to conditions

§ 48.213(4m)

I. Effective period of custody order—

Remains in effect until

1) Disposition order is granted

2) Consent decree is entered into

3) Petition is withdrawn or dismissed, or

J. Predispositional change of placement for AEM

§ 48.217(1)(a)2.

1) 10-day-notice of change-in-placement hearing under § 48.217

a. Who may request

- Intake worker
- Agency primarily responsible
- DA
- Corp counsel

NOTE: Change in placement from in-home to out-of-home can only be made as per § 48.21(6).

b. Notice—information required

§ 48.217(1)(b)1.b.

- Written notice to AEM, physical custodian of AEM, and UC's GAL
- Notice shall contain
  - — Name and address of new placement
  - — Reason for change of placement
  - — Statement why new placement is preferable
- Person sending notice shall file notice with Ct on same day

§ 48.217(1)(c)

c. Hearing—when required

- Any person receiving notice may obtain hearing by filing an objection with the Ct within 10 days after notice is sent and filed with Ct
- If objection timely filed with Ct, Ct will hold hearing before changing placement. Ct will provide notice at least 3 days before hearing. If all parties consent, then Ct may proceed immediately with the hearing

- If no objection filed within 10 days, the Ct shall enter order for change of placement as proposed in notice

- Placements cannot be changed until after notice is sent unless the Ct receives written waivers from parties listed in § 48.217(1)(c)

§ 48.217(1)(d)

d. Hearing—when not required

- Changes of placement authorized in temporary physical custody order may be made immediately if notice given per § 48.217(1)(b). No hearing needed, except when objection filed by person alleging that new information affects advisability of order

e. Contents of order

- If Ct changes placement from outside the home to another placement outside the home, the change-in-placement order shall contain necessary information per § 48.217(2v)(a), (b), and (c)

§ 48.217(2)

2) Emergency change in placement

a. If immediate change in placement outside the home is necessary and a custody order is in place, the intake worker may remove the AEM to new placement, regardless of authorization in existing order and without prior notice

b. Notice will be sent to UC's GAL, AEM, and AEM's physical custodian within 48 hours after emergency change

c. Any party receiving notice may demand hearing

§ 48.217(2m)

3) Request for change in placement by others

a. Who may request under § 48.217(2m): AEM and UC's GAL

b. Information required:

- Name and address of new placement

- What new information affects advisability of current placement

c. Request must be submitted to Ct

d. Ct may also propose change in placement on its own motion

§ 48.217(4)

NOTE: Change in placement from in-home to out-of-home can only be made if Ct finds that AEM is refusing or has refused to accept AODA services or is not making a good-faith effort to participate in any AODA services offered to her.

e. Hearing—when required

- Ct shall hold hearing before ordering change in placement requested or proposed, if the proposal states new information is available that affects advisability of current placement. A hearing is not required if written waivers of objection to proposed change are signed by all persons entitled to notice, and the Ct approves
- If hearing is scheduled, the Ct shall notify UC's GAL, AEM, responsible agency, and DA or Corp counsel. Copy of the request/proposal must be attached to the notice
- The matter can proceed immediately to a hearing if all parties agree

f. Contents of order

If Ct changes placement from outside the home to another placement outside the home, the change-in-placement order shall contain necessary information per § 48.217(2v)(a), (b), and (c)

§ 48.217(6)

K. Effective period of change-in-placement order—

Remains in effect until

1) Disposition order is granted
2) Consent decree is entered into
3) Petition is withdrawn or dismissed, or
4) Modified or terminated by further order of Ct

JV 5: WAIVER TO ADULT COURT/REVERSE WAIVER

Appendix 5
Waiver
RMC Form JD-1723

1. When Juvenile Court Jurisdiction May Be Waived in Favor of Adult Court

§ 938.18(1)

A. If alleged violation of State criminal law occurred on or after child's 15th birthday (except as to offenses over which Adult Ct has exclusive original jurisdiction—see Sec. C. below)

St v Montgomery
148 Wis. 2d 593 (1989)
St v LeQue

150 Wis. 2d 256
(CA 1989)
St v Annala
168 Wis. 2d 453 (1992)

1) Person who commits crime while under 17, but charged after age 17, not constitutionally entitled to Juv Ct jurisdiction, even if Def would not have been subject to waiver if charges had been filed in Juv Ct, EXCEPT

St v Bergwin
2010 WI App 137
329 Wis. 2d 737

a. If intentional delay by State to avoid Juv Ct jurisdiction

- State has burden of showing delay not for purpose of manipulating system to avoid Juv Ct jurisdiction

- Prosecutorial negligence NOT grounds for dismissal of criminal complaint charging offense committed by an adult while a Juv

§ 938.12(2)
DWB v St
(In Int of DWB)
158 Wis. 2d 398 (1990)
St v KAP (In Int of KAP)
159 Wis. 2d 384
(CA 1990)

2) If a petition filed in Juv Ct before person's 17th birthday, but person becomes 17 before admitting the acts, or, if person denies the acts, before adjudication, Juv Ct retains jurisdiction and adult prosecution may not be undertaken without an order for waiver

St v Becker
74 Wis. 2d 675 (1976)
St v Montgomery
148 Wis. 2d 593 (1989)
St v Velez
224 Wis. 2d 1 (1999)

3) State may not delay charging child to avoid Juv Ct jurisdiction

§ 938.18(7)

4) If Juv absconds and does not appear at waiver hearing, Ct may proceed with the hearing. If waiver granted, Juv may contest that waiver when apprehended by showing Ct of criminal jurisdiction good cause for his/her failure to appear

a. If good cause shown, matter is returned to Juv Ct for waiver hearing

§ 938.18(2)
St v Pablo R
(In Int of Pablo R)
2000 WI App 242
239 Wis. 2d 479

5) If Juv, who was not subject to waiver at time delinquency petition filed because of charge and age considerations, absconds and turns 17 before adjudication, State may file waiver petition and Ct has authority to waive

St v Sanders
2018 WI 51
381 Wis. 2d 522

6) Circuit Cts possess statutory competency to proceed in criminal matters when adult Def was charged for conduct committed before Def's 10th birthday

§ 938.18(1)
§ 940.03, § 940.06
§ 940.225(1), (2)
§ 940.305, § 940.31
§ 943.10(2), § 943.32(2)
§ 943.87, § 961.41(1)

B. If one of following crimes is alleged to have occurred on or after Juv's 14th birthday

1) Felony murder

2) Second-degree reckless homicide

   a. See **Sec. C.**4) below regarding Adult Ct jurisdiction over more serious forms of homicide

3) Armed robbery

4) First or 2nd-degree sexual assault (but not sexual assault of a child under § 948.02)

5) Kidnapping

6) Taking hostages

7) Drug manufacturing, distribution, or delivery (but not possession with intent to manufacture, distribute, or deliver)

8) Armed burglary

9) Any offense that would be a felony if committed by an adult when committed at the request of or for benefit of a criminal gang

10) Robbery of a financial institution

§ 970.035

11) If waiver granted on crime specified in paras. 1)–9) above, and prelim Ct does not find probable cause to believe Juv committed any crime specified in paras. 1)–9), Juv must be discharged, but proceedings may be brought under Ch 938

§ 938.183
§ 940.20(1) and (2m)
§ 946.43, § 970.032
St v Martin
191 Wis. 2d 646
(CA 1995)
Appendices 4, 6, 7
Original Adult Court
Jurisdiction
Jurisdiction by Offense
Jurisdiction by Age

C. Cts of criminal jurisdiction have exclusive original jurisdiction over Juv

1) Who has been adjudicated delinquent and is alleged to have committed the offenses of battery by prisoner or assault by prisoner while placed in a Juv correctional facility, a Juv detention facility, or a secured RCCCY or who has been adjudicated delinquent and is alleged to have committed battery to a community supervision agent or aftercare agent

§ 938.183(1)(ar)

a. Criminal Ct also has exclusive original jurisdiction over any alleged offense that could be joined under § 971.12(1) with an offense governed by para. 1)

§ 938.183(1)(b)
St v Hinkle
2019 WI 96
389 Wis. 2d 1

2) Alleged to have violated any criminal law if Juv has been previously waived and convicted in Adult Ct or previously waived and proceedings are pending in Adult Ct

§ 938.183(1)(c)

3) Alleged to have violated any criminal law and the Juv has previously been convicted in Adult Ct of an offense over which Adult Cts have original jurisdiction or proceedings are pending in Adult Ct for such an offense

§ 938.183(1)(am)

4) Alleged to have attempted or committed first-degree intentional homicide, or alleged to have committed first-degree reckless or second-degree intentional homicide on or after 10th birthday [for Juvs accused of similar homicide offenses occurring on or after 15th birthday, see para. 6)c. below]

§ 938.183(1)(ar)

a. Criminal Ct also has exclusive original jurisdiction over any alleged offense that could be joined under § 971.12(1) with an offense governed by para. 4) above

St v Geyser
2020 WI App 58,
¶¶ 21–39
394 Wis. 2d 96

b. At preliminary hearing, State does not need to disprove affirmative defense for Ct to find probable cause to bind over for trial, but simply that Juv probably committed the particular felony with which he or she is charged and which provides for exclusive original Adult Ct jurisdiction. Even if sufficient evidence is presented at preliminary hearing demonstrating probable cause that Def alternatively may have committed a lesser offense that is not within Adult Ct jurisdiction, this does not negate a specific finding of probable cause on the jurisdiction-conferring offense

5) Juvs specified in paras. 1)–4) above are subject to the provisions of the Criminal Code, including criminal penalties, except as set forth below

§ 938.183(1m)(a)

a. Juv under the age of 15 may only be held in Juv detention facility or Juv portion of Cty jail

§ 938.183(1m)(b)
§ 970.032(2)
§ 971.31(13)
St v Kleser
2010 WI 88
328 Wis. 2d 42
St v Verhagen
198 Wis. 2d 177
(CA 1995)

b. Criminal Ct may "reverse waive" Juv in paras. 1)–4) above if Juv proves by preponderance of the evidence all of the following at a reverse-waiver hearing

- If convicted, Juv could not receive adequate treatment in criminal justice system, and
- Reverse waiver would not depreciate seriousness of offense, and
- Retaining jurisdiction is not necessary to deter this and other Juvs from committing original jurisdiction offenses

St v Armstead
220 Wis. 2d 626
(CA 1998)

— Standards for reverse waiver are not unconstitutionally vague

§ 938.183(1m)(c)

6) If Criminal Ct does not reverse waive Juv specified in paras. 1)–4) above, but Juv is found to have committed a lesser or joined offense (but not offense giving Criminal Ct original jurisdiction to which it was joined), the Criminal Ct **shall** find the Juv delinquent and impose a Juv disposition if any of the following apply

§ 938.183(1m)(c)1.

a. Criminal Ct finds Juv committed lesser offense or joined offense that is

- Not a violation of § 940.20(1) or (2m) or § 946.43 [battery by prisoner, battery to community supervision agent or aftercare agent, or assault by prisoner] "under circumstances described in § 938.183(1)(a)"
- Not an attempt to violate § 940.01 [attempted first-degree intentional homicide] and
- Not violation of § 940.02 or § 940.05 [first-degree reckless or second-degree intentional homicide] "under the circumstances described in § 938.183(1)(am)" and
- Not an offense for which Juv Ct could waive jurisdiction

— Examples: Juv accused of battery by prisoner and disorderly conduct but only found to have committed disorderly conduct, or 12-year-old Juv accused of first-degree intentional homicide but found to have committed homicide by negligent handling of a dangerous weapon. Both Juvs would be found delinquent and have a Juv disposition imposed

§ 938.183(1m)(c)2.

b. Criminal Ct finds Juv committed lesser offense or joined offense that is violation of § 940.20(1), (2m) or § 946.43 "under circumstances described in § 938.183(1)(a)" that

- Is an attempt to violate § 940.01 or a violation of § 940.02 or § 940.05 "under circumstances described in § 938.183(1)(am)" or

- Is a "waivable offense," but Criminal Ct determines, after a consideration of the waiver criteria under § 938.18, that the Juv has proved by clear and convincing evidence that it would be in best interests of Juv and public to find him or her delinquent and impose a Juv disposition

— Example: 14-year-old Juv accused of first-degree intentional homicide, but found guilty of second-degree intentional homicide

§ 938.183(1m)(c)3.

c. For Juv alleged to have attempted or committed first-degree intentional homicide, § 940.01, or alleged to have committed first-degree reckless homicide, § 940.02, or second-degree intentional homicide, § 940.05, on or after the Juv's 15th birthday

- Such Juvs are subject to the procedures and penalties of the Criminal Code unless

— Criminal Ct finds that Juv has not attempted or committed first-degree intentional homicide and has not committed first-degree reckless or second-degree intentional homicide, AND

— Criminal Ct determines, after a consideration of the waiver criteria under § 938.18, that the Juv has proved by clear and convincing evidence that it would be in best interest of Juv and public to find him/her delinquent and impose Juv disposition

Committee Note

7) There is a different burden of persuasion imposed in reverse waiver [preponderance of the evidence—§ 970.032(2)] than is imposed for motions before the Criminal Ct to make a finding of delinquency and impose a delinquency disposition based on a conviction for a lesser included or joined offense [clear and convincing—§ 938.183(1m)(c)2. and 3.]

2. Procedure

[For procedure relating to "reverse waiver" please see Criminal Benchbook]

§ 938.18(2)

A. Waiver petition may be initiated by

1) Juv

2) DA

3) Judge if disqualifies self from future proceedings

§ 938.18(4)(c)

B. If Juv does not contest petition for waiver, no testimony need be taken and Ct shall base its decision on whether to waive jurisdiction under waiver criteria upon petition and other relevant evidence in record

1) Ct must be satisfied Juv knowingly, intelligently, and voluntarily decided not to contest waiver

Recommendation

a. In colloquy, Judge should point out the "once waived always waived" provision of the Juv Justice Code

TRB v St (In Int of TRB)
109 Wis. 2d 179 (1982)

2) Previous (pre–Ch 938) case law mandated taking of testimony on waiver criteria even if Juv did not contest

C. Petitions

§ 938.18(2), § 938.255

1) Delinquency petition required, AND

PAK v St (In Int of PAK)
119 Wis. 2d 871 (1984)

a. Adequate and detailed information concerning Juv's alleged offense

TRB v St (In Int of TRB)
109 Wis. 2d 179 (1982)

- Petition must set forth, with specificity, facts sufficient to establish probable cause offense committed and Juv committed it

JG v St (In Int of JG)
119 Wis. 2d 748 (1984)

b. Demonstrable circumstantial guarantees of trustworthiness

Michael JL v St
(In Int of Michael JL)
174 Wis. 2d 131
(CA 1993)

2) Delinquency petition initiates proceedings in Juv Ct

a. Juv Ct's competency to act is invoked when delinquency petition filed

b. Until Juv Ct acquires competency to act by filing of valid delinquency petition, it cannot hear and determine primary issue of waiver petition—the waiver or surrender of the Juv Ct's exclusive jurisdiction over a delinquent

St v Aufderhaar
2005 WI 108
283 Wis. 2d 336

c. Improper service of summons and delinquency petition deprives Juv Ct of personal jurisdiction and invalidates any resultant waiver order

St v Jermaine JT
(In Int of Jermaine JT)
181 Wis. 2d 82
(CA 1993)

d. Appearance of Juv without objecting to jurisdiction of Ct waives defect

§ 938.18(2)

3) Petition for waiver of jurisdiction required

a. Must contain brief statement of facts supporting request for waiver

JVR v St (In Int of JVR)
127 Wis. 2d 192 (1985)

- Waiver petition that cites only allegations in delinquency petition is inadequate

§ 938.18(2), § 938.12(2)
St v KAP (In Int of KAP)
159 Wis. 2d 384
(CA 1990)

b. Must be filed before plea hearing, unless proceeding commenced before Juv's 17th birthday and he/she attains 17 before adjudication, in which case it may be filed at any time before adjudication

§ 938.18(2)
St v Pablo R
(In Int of Pablo R)
2000 WI App 242
239 Wis. 2d 479

- If Juv, who was not subject to waiver at time delinquency petition filed because of charge and age considerations, absconds and turns 17 before adjudication, State may file waiver petition and Ct has authority to waive

§ 938.18(2)

c. Waiver petition must be accompanied by or filed after filing of delinquency petition

PAK v St (In Int of PAK)
119 Wis. 2d 871 (1984)

4) State and Ct may rely solely on delinquency and waiver petitions to establish prosecutive merit

a. Applies to contested and uncontested waiver hearings

§ 938.18(3)(a)

D. Notice

1) At least three days' written notice of time, place, and purpose of hearing to

a. Juv

b. Parent, guardian, or legal custodian

c. Atty

§ 938.29(2)

2) Must contain statement regarding substitution of Judge

§ 757.69(1m)(f)

E. Hearing conducted by Judge not CCC

§ 757.69(1)(g)5.

1) Unless Juv does not contest waiver petition

§ 938.18(3)(c)

2) No jury right

SCR 71.01

3) Must be on record

§ 938.299(5)(a)

F. Hearing may be conducted by telephone or live audiovisual means

§ 938.299(5)(b)

If objection by Juv or prosecutor in Ch 938 case, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

G. Use of restraints (shackling)

§ 938.299(2m)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 938.299(2m). *See infra* **Appendix 13**

§ 938.29(1), (2)

H. Substitution of Judge

1) Written request by alleged delinquent Juv

a. Juv's counsel or GAL may file

§ 938.29(1g)

2) Juv may not request substitution of a Judge in a waiver proceeding if the Judge assigned has previously entered a dispositional order under Ch 938 or the Juv, or Juv's parent, guardian or legal custodian has requested a substitution of Judge in a previous proceeding under § 938.12 (delinquency) or § 938.13(4), (6), (6m), (7), or (12) (JIPS) or an analogous proceeding under Ch 48, 1993 Stats.

3) Filed with Clerk of Ct before close of working day preceding hearing, except Judge may allow request on day of hearing

§ 938.29(1m)

a. Clerk must immediately contact substituted Judge to determine whether request timely and in proper form

b. If timely and in proper form, substituted Judge has no further jurisdiction

4) Filing party must immediately mail or deliver copy of request to assigned Judge

5) Only one request in the waiver proceeding

6) Request must name only one Judge

7) If request made after waiver hearing, Judge who conducted waiver hearing may conduct plea hearing

§ 938.299(4)(b)

I. Common law and statutory rules of evidence NOT binding at waiver hearing

1) Ct must

a. Admit all testimony having reasonable probative value

SN v St (In Int of SN)
139 Wis. 2d 270
(CA 1987)

- Ct may use independent information relevant to waiver provided Juv has notice regarding reports or records to be considered by Ct

b. Exclude immaterial, irrelevant, or unduly repetitious testimony

c. Give effect to rules of privilege recognized by law

d. Apply basic principles of relevancy, materiality, and probative value to proof of all questions of fact

e. Note in record objections to evidentiary offers and offers of proof of evidence not admitted

DED v St (In Int of DED)
101 Wis. 2d 193
(CA 1981)

f. Motion to suppress evidence on grounds of inadmissibility at trial is premature when brought at waiver hearing

2) Ct may admit hearsay evidence if it has demonstrable circumstantial guarantees of trustworthiness

§ 938.18(2m)
St v Tyler T
(Int of Tyler T)
2012 WI 52
341 Wis. 2d 1

3) Ct may order agency to prepare waiver report to be given to all parties 3 days before waiver hearing. Facts in report may be relied on by Ct in determining propriety of waiver

§ 938.299(1)

J. General public must be excluded from waiver hearing unless Juv consents to a public hearing

1) Persons who may be present

a. Parties

b. Counsel

c. Witnesses

d. Anyone requested by a party and approved by Ct

e. Anyone Ct finds to have a proper interest in the case or work of the Ct, including Attys or persons engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

f. News media representative

§ 938.299(1)(am)
§ 906.15

2) Victims of Juv's act may attend any hearing under Ch 938

a. Unless they are sequestered witnesses

b. Unless Ct excludes them from portion of hearing dealing with sensitive personal matters

c. Members of victim's family and, at request of victim, victim support services personnel may also attend hearing

3) General public may attend any hearing under Ch 938 for Juv accused of felony offense IF

a. Juv has been adjudicated delinquent previously and adjudication remains of record and unreversed, or

Appendix 1
SJO Offenses

b. Petition is filed alleging Juv committed an SJO offense. See **Appendix 1** (SJO Offenses) for list of these violations

c. If public admitted under either exception, Ct shall exclude them if victim of sexual assault objects and may exclude them from portions of hearing dealing with sensitive personal matters not relating to delinquent act

§ 938.299(1)(av), (b)

4) Except as provided in § 938.396, or when a public hearing is conducted under § 938.299(1)(a) or (1)(ar), anyone who divulges information that would identify Juv or family will be subject to contempt of Ct under Ch 785. This does not preclude victim from commencing a civil action

§ 938.18(7)

5) If Juv absconds and fails to appear for waiver hearing, Ct may proceed with hearing. If waiver is granted, Juv may contest that waiver when apprehended by showing Ct of criminal jurisdiction good cause for his/her failure to appear

a. If good cause shown, matter is returned to Juv Ct for waiver hearing

§ 938.18(3)(a)
§ 938.23(1m)(a)

K. Juv must by represented by counsel

§ 938.18(3)(b)

1) Juv has right to present testimony, including expert testimony

2) Juv has right to cross-examine witnesses

L. Discovery

§ 938.18(3)(a)
TMJ v St (In Int of TMJ)

110 Wis. 2d 7 (CA 1982)

1) Juv does not have broad discovery rights to police reports or criminal discovery procedures before waiver hearing

a. Right to full discovery only if no waiver petition or Juv jurisdiction retained after waiver hearing

b. Materials relating to Juv's personality and past history are discoverable

c. Juv's discovery rights are similar to discovery rights of adult criminal Def before prelim

2) Juv does not have right to discovery of materials relating to commission of offense itself

3) Juv's right to discovery in delinquency proceedings under § 938.293(2) does not apply to waiver hearing

a. Waiver hearing is not part of delinquency proceeding

§ 938.18(6)

M. Burden on state to establish by clear and convincing evidence that it would be contrary to best interests of Juv or public to hear case in Juv Ct

Comment

1) Previous presumption in favor of waiver if Juv is previously waived has been abolished. Adult Ct has jurisdiction over any crime committed by a Juv previously waived and convicted or who has charges pending in Adult Ct after waiver order

TMJ v St (In Int of TMJ)
110 Wis. 2d 7 (CA 1982)

N. Waiver hearing is not part of delinquency proceeding

1) Delinquency proceedings do not begin until waiver hearing has taken place and jurisdiction has been retained

3. Judge's Duties

A. Determine prosecutive merit

§ 938.18(4)

1) Decision to be reached before proceeding to question of waiver

§ 938.18(4)(a)

a. If Ct determines that matter does not have prosecutive merit, Ct shall deny waiver petition

PAK v St (In Int of PAK)
119 Wis. 2d 871 (1984)

2) State and Ct may rely solely on the delinquency and waiver petitions to establish prosecutive merit even when issue is contested if they contain

a. Adequate and detailed information concerning Juv's alleged offense

b. Demonstrable circumstantial guarantees of trustworthiness

JG v St (In Int of JG)
119 Wis. 2d 748 (1984)

- Ct need not conduct evidentiary hearing where Juv alleges only that confession in delinquency petition was involuntary without stating reason why it was untrustworthy or unreliable

PAK v St (In Int of PAK)
119 Wis. 2d 871 (1984)
TRB v St (In Int of TRB)
109 Wis. 2d 179 (1982)

3) Supreme Ct has equated this determination to probable cause at prelim but procedures are not the same as prelim

JG v St (In Int of JG)
119 Wis. 2d 748 (1984)

4) Focus of Ct in evaluating evidence for prosecutive merit is reliability

a. Hearing required only when specific allegations of unreliability

b. Cannot object in conclusory fashion

§ 938.18(4)(a)

5) Under prosecutive merit determination of § 938.18(4), Ct determines whether it has jurisdiction to waive Juv

a. Prosecutive merit is no longer considered as a criterion for waiver under § 938.18(5). Compare *JG v St (In Interest of JG)*, 119 Wis. 2d 748 (1984)

TRB v St (In Int of TRB)
109 Wis. 2d 179 (1982)

6) Before considering waiver criteria, Ct must satisfy itself that record establishes to a reasonable probability that violation of criminal law alleged has been committed and Juv probably committed it

Note: *TRB* was a pre–Ch 938 case.

§ 938.18(5)

B. Apply waiver criteria

§ 938.18(4)(b)

1) If waiver petition is contested, DA shall present relevant testimony

2) Ct must base decision to waive Juv to Adult Ct on following criteria

§ 938.18(5)(a)

a. Personality of Juv including

JAL v St (In Int of JAL)
162 Wis. 2d 940 (1991)

- Whether Juv has a mental illness or developmental disability

- Juv mental and physical maturity

- Juv's pattern of living
- Prior treatment history and apparent potential for responding to future treatment

§ 938.18(5)(am)

b. Prior record of Juv

- Whether Ct has previously waived jurisdiction
- Whether Juv has previously been convicted in Criminal Ct

Comment

— Because Criminal Cts have exclusive jurisdiction over Juvs previously waived under § 938.183, these two factors would be relevant only in reverse-waiver hearings under §§ 970.032 and 971.31

- Whether Juv has been previously found delinquent
- Whether previous delinquency involved serious bodily injury
- Juv's motives and attitudes
- Juv's prior offenses

§ 938.18(5)(b)

c. Type and seriousness of offense

- Whether against persons or property
- Extent to which committed in violent, aggressive, premeditated, or willful manner

§ 938.18(5)(c)

d. Adequacy and suitability of facilities, services, and procedures available for treatment of Juv and protection of public within Juv or mental health systems, including suitability of Juv for placement in SJO program or adult intensive sanctions program

St v CW (In Int of CW)
142 Wis. 2d 763
(CA 1987)

- No authority to deny waiver on basis that Adult Ct may give lenient sentence

JAL v St (In Int of JAL)
162 Wis. 2d 940, 977
(1991)

- However, may "compare the facilities and services available in the juvenile system with those available in the adult system"

St v Hezzie R
(In Int of Hezzie R)
219 Wis. 2d 848 (1998)

- Provisions of SJO that allowed placement of Juv in adult prison without right to jury trial are unconstitutional

§ 938.18(5)(d)

e. Desirability of trial and disposition of entire offense in one Ct if allegedly associated with others in offense

PAK v St (In Int of PAK)
119 Wis. 2d 871 (1984)

f. State need not produce evidence on each statutory criterion

§ 938.18(4)(c)

3) No testimony need be taken if Juv does not contest waiver. Ct may base waiver decision on petition and other relevant evidence

PAK v St (In Int of PAK)
119 Wis. 2d 748 (1984)

a. Ct must determine decision not to contest is knowing, voluntary and intelligent

Recommendation

- In colloquy, Judge should point out the "once waived always waived" provision of new Juv Justice Code

§ 938.18(6)
CG v St (In Int of CG)
154 Wis. 2d 298
(CA 1990)

C. Decide whether State met burden to establish by clear and convincing evidence that it would be contrary to best interests of Juv or public to hear case in Juv Ct

§ 938.18(6)

D. Make findings and determinations

1) Ct must state finding with respect to criteria in **Sec. B.** above on record

a. Ct need not resolve each of criteria against Juv to justify waiver

GBK v St (In Int of GBK)
126 Wis. 2d 253
(CA 1985)

2) Weight to be accorded each of criteria is discretionary with Trial Ct

BB v St (In Int of BB)
166 Wis. 2d 202
(CA 1991)

a. Extreme seriousness of offense can justify waiver order even if all other factors suggest retention in Juv system

GBK v St (In Int of GBK)
126 Wis. 2d 253
(CA 1985)

b. Ct may give great weight to proximity of Juv to 17

JAL v St (In Int of JAL)
162 Wis. 2d 940 (1991)

c. Mental illness may support waiver in that it may render rehabilitation in Juv system less likely

St v XS (In Int of XS)
2022 WI 49
402 Wis. 2d 481
St v Kraemer
156 Wis. 2d 761
(CA 1990)

3) Failure of Ct to set forth specific findings as to each criterion is erroneous exercise of discretion

4. Jurisdiction Waived

§ 938.18(6)
RMC Form JD-1723

A. If determination is to waive Juv Ct jurisdiction, Ct must enter order waiving jurisdiction and referring matter to DA for criminal proceedings

1) Adult Ct then has exclusive jurisdiction

Craig SG v St
(In Int of Craig SG)
209 Wis. 2d 65
(CA 1997)
St v Stephens
201 Wis. 2d 82
(CA 1996)

a. Double jeopardy not violated when Juv waived and prosecuted even though Juv Ct relied in part on waived offense in ordering extension of existing Juv Ct dispositional order or in ordering sanctions

§ 938.18(8)

2) If Juv in secure custody

a. Transfer to appropriate officer or adult facility

Chs 968, 969

b. Eligible for bail

St v Baker
179 Wis. 2d 655
(CA 1993)

c. Upon conviction in Adult Ct and imprisonment, Def entitled to sentence credit under § 973.155 for time spent in Juv detention

St v Vairin M
(In Int of Vairin M)
2002 WI 96
255 Wis. 2d 137

B. Juv Ct lacks jurisdiction to reconsider waiver order after State has filed charges against Juv in Adult Ct

1) After criminal case filed, Juv seeking review of waiver order must file interlocutory appeal and must move to stay criminal court proceedings pending appeal, OR

2) If "compelling new grounds" shown, file motion with Adult Ct asking Ct to relinquish jurisdiction back to Juv Ct

a. Motion must allege new factor not known or overlooked at time of waiver order, highly relevant to waiver criteria, and would likely have affected waiver determination

b. If Adult Ct grants motion, Juv Ct may consider motion for reconsideration

St ex rel AE v Cir Ct
94 Wis. 2d 98 (1980)

C. Waiver is nonfinal order but Ct of Appeals encouraged to give careful consideration to granting leave to appeal

§ 938.18(9)
St v Karow
154 Wis. 2d 375
(CA 1990)

D. Once waiver has occurred, prosecutor may, in his or her discretion, charge other offenses not wholly unrelated to transactions or facts considered or testified to at waiver hearing

JV 6: PLEA HEARING AND PRETRIAL ISSUES

§ 48.30(1)
§ 938.30(1)

1. Time Periods

A. Plea hearing shall be held within 10 days after filing of petition for child/Juv in secure custody

B. Plea hearing shall be held within 30 days after filing of petition for child/Juv/EM NOT in secure custody

§ 48.305
§ 48.19(1)(c), (cm), (d)5., (d)8.
§ 48.193(1)(c), (d)2.
§ 938.305
§ 938.19(1)(c), (d)5.

1) EXCEPT if child/Juv was removed from parent or guardian without consent by Ct order or because law enforcement believed child/Juv suffering from illness or injury or in immediate danger; or if CEM removed from parent or guardian without consent by Ct order or because law enforcement believed there was substantial risk to physical health of UC; or if AEM taken into custody without her consent by Ct order or because law enforcement believed there was substantial risk to physical health of UC

a. Ct shall schedule plea hearing and fact-finding hearing within 30 days after request of parent, guardian, or AEM

- Hearings may be combined

b. May be extended only with consent of requesting parent, guardian, or AEM

c. Subject to § 48.299(9)/§ 938.299(10), notice required for Indian child/Juv hearing

§ 48.315(1)(j)
§ 938.315(1)(a)11.

- Computation of time does not include reasonable period of delay (up to 20 days), resulting from continuance requested by parent, tribe, or Indian custodian in proceeding involving out-of-home care placement of Indian child/Juv or TPR of Indian child

§ 48.355(2d)(c)
§ 938.355(2d)(c)
§ 938.38(4m)
§ 48.38(4m)

C. Plea hearing may be appropriate time for permanency hearing, which must be held within 30 days after finding no reasonable efforts required

1) See **JV 9**

St v Joshua MW
(In Int of Joshua MW)
179 Wis. 2d 335
(CA 1993)

D. Once case reassigned to new Judge, matter must be set for continued plea hearing within reasonable time

1) Delay beyond 10 days if child/Juv in secure custody, or beyond 30 days if not in secure custody is unreasonable as a matter of law

§ 48.315(2)
§ 938.315(2)

E. Ct shall only grant continuances upon showing of good cause in open Ct or during telephone conference on the record and only for so long as is necessary

1) Ct must take into account

a. Request or consent of parties

b. Interests of victims

c. Interest of public in prompt disposition

§ 48.315(2m)
§ 938.315(2m)

2) No continuance may delay required ASFA findings

3) See **Sec. 1** in **JV 3**, **Time Constraints**, for full discussion of continuances

2. Right to Counsel or GAL

A. See JV 2, Sec. 2

3. Procedure

§ 757.69(1)(g)

A. May be held by Judge or CCC

§ 938.30(4m)

B. Before accepting plea in delinquency and § 938.13(12) case, Ct must inquire of prosecutor whether

§ 938.27(4m)

1) S/he made reasonable attempt to contact victims and tell them of right to receive notice of hearings

§ 938.265

2) S/he conferred with victims who wanted to confer

3) Victims who requested notice received notice of this hearing

§ 48.30(2)
§ 938.30(2)

C. At (or at or before in Ch 938 proceedings) commencement of plea hearing, Judge or CCC must advise child/Juv and parent, guardian, legal custodian, or Indian custodian, UC's GAL, and AEM of following

1) Nature and possible consequences of proceedings based on petition, including, if applicable

§ 938.17

a. Civil law or ordinance proceeding

§ 938.18

b. Waiver of jurisdiction to Adult Ct

§ 48.243
§ 938.243

2) Right to remain silent, with understanding that

a. Silence of Juv in delinquency proceeding may not be adversely considered by Ct or jury, or

b. Silence of any person may be relevant in any non-delinquency proceeding, EXCEPT

- Silence of Juv in any § 938.13(7) or § 938.13(12) proceeding

Caution

— Be aware of language in § 938.21 regarding silence of these Juvs in custody hearings

Recommendation

c. Treat Juv's silence at a temporary custody hearing and silence at a plea hearing differently

3) Right to confront and cross-examine those appearing against them

4) Right to counsel and right of child/Juv/EM/Indian parent or Indian custodian to appointed counsel

5) Right to present and subpoena witnesses

§ 48.243(1)(g)

6) Right to jury trial in Ch 48 proceedings

7) Right to have allegations of petition proved

§ 938.243(1)(h)

a. Beyond a reasonable doubt when Juv alleged to have committed a delinquent act, including acts under § 938.13(12)

§ 48.243(1)(h)
§ 938.243(1)(h)

b. By clear and convincing evidence in nondelinquency proceedings

§ 48.30(2)
§ 48.29

8) That request for substitution of Judge and, in Ch 48 proceedings, for jury trial, must be made before end of hearing or be waived

§ 938.30(2)

a. Nonpetitioning parties, including child/Juv, must be granted continuance if wish to consult Atty on request for jury in Ch 48 proceeding or substitution of Judge

St v Kywanda F
(In Int of Kywanda F)
200 Wis. 2d 26 (1996)

b. Failure to advise of right to substitution is harmless error unless party establishes prejudice by showing no knowledge of this right

MG v La Crosse Cty
Human Servs Dept
(In Int of GH)
150 Wis. 2d 407 (1989)

9) Policy should be to follow literally statutory enumeration of rights

Committee Comment

10) It does not appear that alleged father of UC, even if married to EM, has any statutory rights in UCHIPS proceeding except to notice if CEM. *See* §§ 48.30(2), (3), 48.27(3), 48.21

§ 938.21(1m)

11) If Juv is taken into custody for violation that would be violent crime (as defined in § 165.84(7)(ab)) in Adult Ct, then Ct must determine whether a biological specimen has been obtained from Juv under § 165.84(7)

a. If specimen has not been obtained, Ct shall direct that specimen be taken

b. If Ct requires specimen, Ct must advise that Juv may request expungement under § 165.77(4)

D. Use of restraints (shackling)

§ 48.299(2m)
§ 938.299(2m)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m) or § 938.299(2m). *See infra* **Appendix 13**

§ 48.29, § 938.29

E. Request for substitution of Judge

1) (Unborn) child/Juv/EM, parent, guardian or legal custodian may request substitution of Judge in writing

See § 938.29(1g)

a. While § 938.29(1) does not expressly authorize substitution by parent or guardian in JIPS case, § 938.29 implies it

St ex rel Mateo DO
v Cir Ct
2005 WI App 85
280 Wis. 2d 575

b. May be filed by party's counsel or GAL

§ 938.29(1g)

2) No request for substitution in JIPS or delinquency case if Judge assigned to proceeding has entered a dispositional order with respect to the Juv in a previous JIPS or delinquency proceeding under Ch 48 (1993) or Ch 938 or the Juv or Juv's parent, guardian, or legal custodian has requested substitution of Judge in previous JIPS or delinquency proceeding under Ch 48 (1993) or Ch 938

§ 938.29(1)

3) Only Juv may request substitution when Juv alleged to have committed delinquent act, including act under § 938.13(12)

4) Must be filed with Clerk of Ct before or during plea hearing

a. Filing party must immediately mail or deliver copy of request to assigned Judge

§ 751.03

5) After request filed, Judge disqualified to act and must promptly request assignment of another Judge

§ 938.29(2)

a. EXCEPT, if request made after waiver hearing under § 938.18, substituted Judge may conduct plea hearing before reassignment

§ 48.29(1)
§ 938.29(1)

6) In any one proceeding, only one request may be filed

St ex rel Julie AB
v Cir Ct
(In re TPR to Prestin TB)
2002 WI App 220
257 Wis. 2d 285

7) More than one party may file request

§ 48.29(1)
§ 938.29(1)

8) Only one Judge may be named in request

F. Demand for jury trial

1) May be made by alleged

§ 48.31(2)

a. CHIPS/UCHIPS by GAL

b. CHIPS parent, guardian, or legal custodian

c. EM

§ 938.31(2)
St v Hezzie R
(In Int of Hezzie R)
219 Wis. 2d 848 (1998)

d. No right to jury trial in Ch 938 actions

§ 48.30(2)

2) Must be made before end of plea hearing

§ 48.30(2)

3) Nonpetitioning party, including child, must be granted continuance to consult with Atty on request for jury

NE v DHSS
(In Int of NE)
122 Wis. 2d 198 (1985)

4) Child's right to jury trial, once demanded, must be withdrawn personally, by child, either in writing or on record in open Ct

SCR 71.01

G. Hearing must be recorded

§ 48.30(10), § 938.30(10)

1) May be held by telephone or live audiovisual means

§ 938.299(5)(b)

If objection by Juv or prosecutor in Ch 938 case, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

§ 48.299(5), § 938.299(5)

2) Under Ch 48, testimony may be received by telephone or live audiovisual means; under Ch 938, proceeding must be reported by Ct reporter who is in simultaneous voice communication with all parties to the proceeding

§ 48.299(1), § 938.299(1)

H. If public hearing not held, general public excluded from plea hearing

§ 48.299(1)(a)

1) Under Ch 48, public fact-finding hearing may be demanded by child, EM, or UC's GAL, but hearing may not be public if parent, guardian, EM, or UC's GAL objects

§ 938.299(1)(a)

2) Under Ch 938, public fact-finding hearing may be demanded by Juv, but hearing may not be public if parent or guardian objects in nondelinquency proceeding, or if victim of alleged sexual assault objects

3) Persons who may be present

a. Parties

b. Counsel/GAL/CASA

§ 48.299(1)(ag)
§ 938.299(1)(ag)

c. Child's/Juv's foster parent or physical custodian, who may be excluded from portion of hearing dealing with sensitive personal information or if exclusion in child's/Juv's best interest

§ 938.299(1)(am)
But see Wis Const art 1,
§ 9m(2)(e)

d. Victim, victim's family member and representative of victim's organization may attend any hearing for alleged act against victim, but may be excluded from portion of hearing dealing with sensitive personal information not directly related to alleged act

e. Witnesses

f. Anyone requested by party and approved by Ct

g. Anyone Ct finds to have proper interest in case or work of Ct, including Attys or a person engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

- Representative of news media who wishes to report news without revealing identity of Juv involved

§ 48.299(1)(b), Ch 785
§ 938.299(1)(b)

4) Except as provided in § 48.375(7)(e), § 48.396, and § 938.396, or when a public hearing is held, anyone who divulges information that would identify child/Juv/EM or family subject to contempt of Ct

§ 938.299(1)(b)

a. Does not preclude a victim from commencing a civil action

§ 48.299(3)

5) Child must be present unless

a. Ct finds it in best interest of child with counsel's and GAL's consent to temporarily exclude child from CHIPS hearing

b. Ct finds child under 7 years too young to comprehend hearing and in child's best interest to be excluded from entire hearing

I. In addition to provisions in Sec. H. above, the following may attend proceedings under Ch 938

§ 938.299(1)(ar)

1) General public may attend any hearing for Juv charged with felony who was previously found delinquent

Appendix 1
SJO Offenses

2) General public may attend any hearing for Juv charged with violation

a. That would be a felony if committed by an adult, and Juv has prior adjudication of delinquency of record and unreversed

b. That is an SJO violation

- See **Appendix 1**, SJO Offenses, for list of violations

c. Ct shall exclude public if victim of sexual assault objects to public hearing and may also exclude public during portion of hearing dealing with sensitive personal matters of Juv and family

§ 48.299(6)
§ 938.299(6)

J. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

1) Proceedings may be stayed if specific findings made

§ 48.299(6)(d)
§ 938.299(6)(d)

a. For example, if Ct determines or has reason to know that paternity proceedings may result in a finding that child/Juv is Indian child/Juv and in a petition by child's/Juv's parent, Indian custodian, or tribe for transfer of jurisdiction to tribe

§ 48.299(8)
§ 938.299(8)

2) Ct may order record of mother's testimony regarding paternity, which is admissible in Family Ct paternity action

Comment

3) It appears that putative father not entitled to participate as party until adjudicated father

§ 48.299(6)(e)
§ 938.299(6)(e)

K. Ct may order man to submit to testing, including genetic testing, and if the results show probability that man is father is 99.0% or higher, Ct may determine that man is father for proceedings under Ch 938 or Ch 48, except TPR

§ 48.299(6)(e)5.
§ 938.299(6)(e)5.

1) Not a determination of paternity under § 48.355(4g)(a)/§ 938.355(4g)(a), a judgment of paternity under Ch 767, or an adjudication of paternity under Subch VIII of Ch 48

4. Form of Plea

§ 48.30(3)
§ 938.30(3)

A. CHIPS, UCHIPS, and non-delinquency JIPS [§ 938.13(4), (6), (6m), (7), or (14)] petition

1) Nonpetitioning parties, including parents of CEM, AEM, and child/Juv 12 or older or otherwise competent, must state whether they wish to contest petition

§ 938.30(4)

B. Delinquency, civil law or ordinance, or JIPS under § 938.13(12) petition. Juv may plead as follows

§ 938.30(4)

1) Admit some or all facts alleged in petition or citation

   a. Plea is only admission of commission of act and not admission of delinquency

2) Deny facts alleged in petition or citation

   a. If Juv stands mute or refuses to plead, Ct must direct entry of denial of facts on Juv's behalf

3) Plead no contest to allegations subject to approval of Ct

4) Plead not responsible for acts by reason of mental disease or defect

   a. Not available in civil law or ordinance violation cases

   b. Plea must be joined with admission, denial, or plea of no contest

C. If plea is not guilty by mental disease or defect, see Sec. 9, *infra*

5. Petition or Citation Not Contested

§ 48.30(6)
§ 938.30(6)

A. If petition not contested, Ct shall schedule dispositional hearing

1) Within 10 days after plea hearing for child/Juv in secure custody

2) Within 30 days after plea hearing for child/Juv/EM NOT in secure custody

3) If placement may be outside the home, order parent to provide financial information to Ct or designated agency at least 5 days before scheduled dispositional hearing and give parent document describing child support factors

4) Time limits are subject to application of §§ 48.299(9), 938.299(10), 48.315(1)(j), and 938.315(1)(a)11. if proceeding involves Indian child/Juv

§ 938.30(6)

B. If citation not contested, Ct may immediately enter dispositional order

§ 48.30(8)
§ 938.30(8)

C. Before accepting admission or plea of no contest, Ct must (except when Juv fails to appear or stipulates to citation)

1) Address child/Juv/EM and parents of CEM and parties personally and determine voluntariness of plea and understanding of

a. Nature of acts alleged in petition or citation

b. Potential dispositions

c. Rights waived by entry of plea

- See knowing waiver of rights enumerated at **Sec. 3.C.** above

2) Establish whether promises or threats made to elicit plea or admission

3) Alert unrepresented parties to possibility that Atty may discover defenses or mitigating circumstances

4) Make inquiries to establish factual basis for plea or admission

§ 938.341

5) At time of adjudication, if act would be a felony if committed by an adult, Ct must inform Juv of penalties under § 941.29 (possession of firearm by felon)

Recommendation

a. Give warning before accepting admission or plea

§ 48.30(9)
§ 938.30(9)

D. If CCC accepts admission to delinquency, CHIPS, UCHIPS, or JIPS petition at plea hearing, Ct must, at dispositional hearing

1) Review admission at beginning of dispositional hearing by addressing parties

2) Make inquiries immediately above in **Sec. C.**

6. Petition or Citation Contested

§ 48.30(7)
§ 938.30(7)

A. Ct shall schedule fact-finding hearing

1) Within 20 days after plea hearing for child/Juv in secure custody

2) Within 30 days after plea hearing for child/Juv/EM NOT in secure custody

3) Subject to §§ 48.299(9) and 938.299(10) in case of Indian child/Juv

7. Testing for HIV, Sexually Transmitted, and Communicable Diseases

A. At plea hearing or at any time thereafter, DA or Corp Counsel may seek Ct order for Juv to submit to

§ 938.296(1)(bm), (c), (2)
§ 252.01(2m)
§ 252.11

1) HIV test and test or series of tests to detect presence of a sexually transmitted disease (STD); each test must be administered by a health-care professional

§ 938.296(2m)

2) Test or series of tests administered by health-care professionals to detect presence of communicable disease

§ 938.296(2), (2m)

B. Juv must be alleged to have violated § 940.225, § 948.02, § 948.025, § 948.05, § 948.06, or § 948.085(2) in a § 938.12 or § 938.13(12) proceeding for HIV test; alleged to have violated § 946.43(2m) [assaults by prisoners] for communicable disease test

§ 938.296(2)(a), (2m)(a)

1) Request for DA or Corp Counsel to apply for order must be made by adult victim or parent, guardian, or legal custodian of child victim; and

§ 938.296(2)(b), (2m)(b)

2) DA or Corp Counsel has probable cause to believe victim has had contact with Juv's body fluid that constitutes a significant exposure, or Juv's (alleged) act that violated § 946.43(2m) involved Juv's bodily substance(s) and carried potential for transmitting communicable disease. This requirement unnecessary if Juv found delinquent, JIPS, or not responsible by reason of mental disease or defect

§ 938.296(3), (5)

C. Request may be made at or after plea hearing, after Juv found delinquent or JIPS or NGI, or after Ct has determined Juv not competent to proceed and suspended proceedings

§ 938.296(4), (5)

D. If Juv found not competent, Ct may only proceed if it first determines that the probable cause finding can be fairly made without the personal participation of the Juv

E. Ct shall hold hearing on request and may only order the test(s)

§ 938.296(4)

1) For HIV or STD, after making a finding of probable cause that victim or alleged victim has had contact with Juv's body fluid that constitutes a significant exposure

§ 938.296(5)

2) For communicable diseases, after making a finding of probable cause that the Juv's act carried a potential for transmitting communicable disease to alleged victim and involved Juv's bodily substance

§ 938.296(4), (5)

F. If probable cause found, Ct must order test(s) administered by health-care professionals

§ 938.296(4), (5)

G. Results of tests shall be disclosed to following

1) Parent, guardian, or legal custodian of Juv

2) Victim or alleged victim, if an adult

3) Parent, guardian, or legal custodian of victim or alleged victim if a child

4) Health-care professional that provides care for the Juv, upon request of parent, guardian, or legal custodian of Juv

5) Health-care professional that provides care for victim or alleged victim if requested by adult victim or parent, guardian, or legal custodian of child victim

§ 938.296(6)

H. Ct may order Cty to pay cost of tests ordered and may order reasonable contribution to cost from parent or guardian of Juv based on ability to pay

§ 48.295
§ 938.295

8. Physical, Psychological, Mental, Developmental, or AODA Examination

§ 48.295(1)
§ 938.295(1)

A. Examinations in general—Ct may order examination of child/Juv under its jurisdiction or parent, guardian, or legal custodian whose ability to care for child/Juv at issue

1) After filing of petition

2) Upon finding reasonable cause exists to warrant examination

3) Ct must hear any objections by child/Juv, parent, guardian, or legal custodian

4) Examination must be on outpatient basis

5) Examination must be by physician, psychiatrist, licensed psychologist, or other expert holding at least a master's degree in social work or related field of child development

§ 48.295(3)
§ 938.295(3)

6) If child/Juv or parent objects to particular examiner, Ct must appoint someone else

§ 48.295(1)
§ 938.295(1)

7) Expense of examination approved by Ct must be paid by Cty of ordering Ct, except in Cty with population of 750,000 or more, where exam in Ch 48 action must be paid by DCF

Shawn BN v St
(In Int of Shawn BN)
173 Wis. 2d 343
(CA 1992)

8) Period of delay occasioned by Ct-ordered exam excluded from computation of time periods

§ 48.295(1)
§ 938.295(1)
RMC Form JD-1732

B. AODA—Ct may order AODA assessment of AEM/child/Juv under its jurisdiction, or parent, guardian, or legal custodian whose ability to care for child/Juv at issue

1) After filing petition

2) Upon finding reasonable cause exists to warrant assessment

§ 48.295(1c), § 48.547
§ 938.295(1c), § 938.547

3) Reasonable cause for AODA assessment exists if

§ 48.295(1c), § 48.24(2)
§ 938.295(1c), § 938.24(2)

a. Multidisciplinary screen (MDS) conducted indicates child at risk of having AODA needs and problems

§ 938.295(1c)(b)

b. Juv was adjudicated delinquent on basis of offense specified in Ch 961

§ 938.295(1c)(c)

c. Greater weight of evidence at fact-finding hearing indicates that offense that formed basis for adjudication was motivated by Juv's need to purchase or otherwise obtain alcohol beverages or controlled substances

§ 48.295(1), § 938.295(1)

4) Ct must hear objections before ordering assessment

§ 48.295(4), § 938.295(4)

a. For Ch 48, motions may be heard under § 807.13; for Ch 938, under § 938.299(5)

§ 48.295(3), § 938.295(3)

b. Child/Juv/AEM or parent may object to particular expert

- If objection made, Ct must appoint different person

§ 48.295(1), § 938.295(1)

5) Assessment must be on outpatient basis

6) Assessment must be by personnel in approved treatment facility for AODA

§ 48.547(4), § 938.547(4)

7) Assessment must conform to criteria approved and developed by DCF (under Ch 48) or by DOC (under Ch 938)

§ 48.295(1g)
§ 938.295(1g)

8) Within 14 days after Ct order, facility to report results of assessment to Ct

a. If child/Juv is not EM and not held in secure or nonsecure custody, on request of facility, Ct may extend period for assessment for not more than 20 additional working days

b. Report must include

- Recommendation whether child/Juv/AEM in need of treatment for AODA and if so, report to recommend service plan and appropriate treatment from approved treatment facility

- Recommendation whether child/Juv/AEM in need of education relating to use of AOD and if so, report must recommend a Ct-approved education program

§ 48.295(1), § 48.361
§ 938.295(1), § 938.361

9) Payment for AODA assessment

§ 48.361(2)(a)1., 1m.
§ 938.361(2)(a)1.

a. If parent or AEM neglects, refuses, or is unable to provide assessment through health insurance or other 3rd-party payments, Judge may order parent or AEM to pay

b. If 3rd-party payer or health insurance provider refuses to pay, Ct may order either to pay in accordance with terms of parent's or AEM's policy or plan

§ 48.361(2)(b)1., 1m.
§ 938.361(2)(b)1.

c. If Ct in Cty that has AODA program finds payment not attainable under para. a. or b. above, Ct may order Cty Dept of human services or § 51.42 or § 51.437 Dept in child's/Juv's/AEM's Cty of legal residence to pay

- Applies regardless of whether custody of child/Juv taken from parent

§ 48.361(2)(b)2.
§ 938.361(2)(b)2.

d. Provision of services subject to conditions in Ch 51

§ 48.361(2)(c)
§ 938.361(2)(c)

e. Payment by Cty does not prohibit

- Cty from contracting with another Cty Dept or approved treatment facility for provision of assessment

- Recovery of reasonable contribution toward costs from parent or AEM

9. Competency and NGI

§ 938.295(2)(a)

A. Mental disease/defect and competency examinations—Ct must order examination if probable cause that Juv committed delinquent act and not competent to proceed or plea of not responsible by reason of mental disease or defect entered

1) Examination must be by psychiatrist or licensed psychologist

2) Examination must be on outpatient basis, unless

a. Juv presents substantial risk of physical harm to self or others, or

b. Juv, parent or guardian, and legal counsel or GAL consent to inpatient evaluation

3) Inpatient examination must be for specified period no longer than necessary to complete examination

§ 938.295(3)

4) If Juv or parent objects to particular examiner, Ct must appoint someone else

§ 938.295(2)(a), (c)

5) Expenses of examination approved by Ct must be paid by Cty of ordering Ct and, Cty may recover reasonable contribution, based on ability to pay, from parent or guardian

§ 938.295(2)(b)

6) If examination ordered by Ct after plea hearing at which Juv entered plea of not responsible by reason of mental disease or defect

a. Examiner to file report with Ct by date specified in order

- Ct to send copies to DA or Corp Counsel and to Juv's counsel or GAL

b. Report to include

- Description of nature of examination
- Identification of persons interviewed
- Particular records reviewed
- Tests administered to Juv

- Opinion on whether Juv suffered from mental disease or defect at time of commission of act alleged in petition and if so, whether this caused Juv to lack substantial capacity to appreciate wrongfulness of his or her conduct or to conform conduct to requirements of law

- Facts and reasoning, in reasonable detail, on which examiner's opinions based

§ 938.295(2)(b)

7) If examination ordered by Ct after finding probable cause Juv committed offense and competency an issue

a. Report shall comply with requirements in paras. 6)a. and b. above, except for opinion on mental disease or defect and

b. Opinion regarding Juv's present mental capacity to understand proceedings and assist in defense

§ 938.295(2)(b)
§ 938.30(5)(e)

- If Juv lacks competency to proceed, report to include opinion regarding likelihood Juv, if provided treatment, may be restored to competency within one year or within time period of maximum sentence adult could receive for most serious delinquent act alleged in petition, whichever is less

§ 938.30(5)

B. Hearings

1) Held if Juv pleads not responsible for acts by reason of mental disease or defect, or if competency is an issue

§ 938.125, § 938.17(2)

a. Not available in civil law or ordinance violation cases

§ 938.30(4)(c)

b. Plea of not responsible by reason of mental disease or defect must be joined with admission, denial, or plea of no contest

2) Notice provisions of § 938.299(10) apply when:

a. Juv is Indian Juv and is placed out of home

§ 938.30(5)

C. Hearing Procedure—Mental Disease or Defect

§ 938.30(5)(a)1.

1) If Juv admits or pleads no contest, NGI phase of fact-finding hearing MUST be held

a. Within 30 days after plea hearing for Juv not in secure custody

b. Within 10 days after plea hearing for Juv in secure custody

§ 938.30(5)(a)2., (7)
§ 938.31

2) If Juv denies allegations

a. Fact-finding hearing must be held (subject to § 938.299(10))

- Within 30 days after plea hearing for Juv not in secure custody
- Within 20 days after plea hearing for Juv in secure custody
- See **JV 7**, this volume for fact-finding procedure

§ 938.30(5)(a)2.

- If Ct finds allegations in petition have been proved, immediately hold hearing to determine whether Juv not responsible by reason of mental disease or defect

RHL v St (In Int of RHL)
159 Wis. 2d 653
(CA 1990)

3) Independent of Juv's plea, Juv has no right to jury determination as to mental responsibility

§ 938.30(5)(c)

4) If Ct finds Juv not responsible by reason of mental disease or defect, Ct must dismiss petition with prejudice AND

a. If probable cause under § 51.20(1)(a)1. and 2., order filing of petition under Ch 51, or

§ 938.13(14)

b. Order filing of JIPS petition alleging that Juv has been determined to be not responsible under § 938.30(5)(c) for delinquent act by reason of mental disease or defect

§ 938.30(5)(b)

5) If Ct finds Juv responsible, Ct to proceed to dispositional hearing

D. Hearing procedure—Competency to proceed

§ 938.30(5)(a)3.

1) If Ct finds probable cause to believe Juv has committed alleged offense AND reason to doubt Juv's competency to proceed, competency hearing MUST be held

a. No more than 10 days after plea hearing for Juv in secure custody

b. No more than 30 days after plea hearing for Juv not in secure custody

2) See **JV 7** for fact-finding procedure

§ 938.30(5)(bm)

3) If Ct finds Juv competent to proceed, Ct SHALL continue with delinquency proceeding

§ 938.30(5)(d)
RMC Form JD-1733

4) If Ct finds Juv not competent to proceed, Ct SHALL suspend proceedings AND

a. If Juv meets criteria under § 51.20(1)(a)1. and 2., order filing of petition under Ch 51, OR

b. Order filing of JIPS petition under § 938.13(14)

§ 938.30(5)(e)1.

5) Periodic re-examination required during period of suspension if Ct finds Juv likely to regain competency during the lesser of one year or period of maximum adult criminal sentence for alleged delinquent act

a. Reports of re-examination SHALL be submitted to Ct every 3 months AND within 30 days before expiration of commitment or JIPS order, and SHALL indicate whether

- Juv has become competent, OR

- Juv is likely to become competent in remaining period of commitment or JIPS order, OR

St v AL (In Int of AL)
2019 WI 20
385 Wis. 2d 612

- Juv not likely to attain competency within remaining period of commitment or JIPS order

§ 938.30(5)(e)2.

b. Copies of reports SHALL be provided to DA or Corp Counsel and Juv's counsel

St v AL (In Int of AL)
2019 WI 20
385 Wis. 2d 612

c. Ct retains jurisdiction over suspended proceedings to reevaluate competency

St v MDM
(In Int of MDM)
2021 WI App 42, ¶ 9
398 Wis. 2d 718

Competency hearing is mandatory when Ct receives information that Juv's competency is restored

§ 938.30(5)(e)2.

6) If report of re-examination indicates Juv competent, Ct SHALL hold a competency hearing within 10 days after receipt of report

§ 938.30(5)(e)2.

7) If Ct determines Juv is competent, Ct SHALL

a. Terminate commitment or JIPS order, and

b. Resume delinquency proceeding

§ 938.30(5)(e)3.

c. Ct may make appropriate orders to continue administration of medication in order to maintain Juv's competence for duration of proceedings

§ 48.297, § 938.297

10. Motions Before Trial

§ 48.297(1), § 938.297(1)

A. Any motion capable of determination without trial of general issue may be made before trial, except that

§ 48.297(2), § 938.297(2)

1) Defenses or objections based on following defects must be raised no later than 10 days after plea hearing or are waived

a. Defects in institution of proceedings

b. Lack of probable cause on face of petition or citation

c. Insufficiency of petition (or citation)

d. Invalidity in whole or part of statute on which petition or citation issued

§ 48.297(3)
§ 938.297(3)

2) Motions to suppress evidence or statements must be made before fact-finding

a. Ct may entertain motion at fact-finding

- If party is surprised by attempt to introduce such evidence and waives jeopardy

§ 938.12, § 938.125
§ 938.13(12)

- Only Juv may waive jeopardy in civil law or ordinance violations or when Juv alleged to have committed delinquent act

§ 48.297(3)
§ 938.297(3)

b. Case law on seizure of evidence and obtaining statements is applicable (See Criminal Volume of Benchbooks)

§ 938.195, § 938.31(3)(c)
St v Jerrell CJ
(In Int of Jerrell CJ)
2005 WI 105
283 Wis. 2d 145
St v Dionicia M
(In Int of Dionicia M)
2010 WI App 134
329 Wis. 2d 524
see also St v Moore
2015 WI 54
363 Wis. 2d 376

- Custodial statements of Juv must be electronically recorded. Limited exceptions may apply

- For search and seizure in public school setting, see *St v Angelia DB (In Int of Angelia DB)*, 211 Wis. 2d 140 (1997)

St v Thomas JW
(In Int of Thomas JW)
213 Wis. 2d 264
(CA 1997)

- Delinquency proceedings for Juvs under the age of 10 are civil. State need not prove *Miranda* compliance to admit custodial statement

3) Availability of summary judgment

Steven V Kelley H
(In re TPR
of Alexander V)
2004 WI 47
271 Wis. 2d 1

a. Summary judgment available in CHIPS and JIPS, and partial summary judgment available in TPR at grounds phase when no dispute of material fact

Pennsylvania v Ritchie
107 S. Ct. 989 (1987)
St v Johnson
2023 WI 39
407 Wis. 2d 195
St v LaBine
198 Wis. 2d 291
(CA 1995)
Rock Cty DSS v DeLeu
(In Int of KKC)
143 Wis. 2d 508
(CA 1988)

4) Requests for release of child's/Juv's records, see **JV 12**, **Records**

St ex rel Kenneth S v
Circuit Ct for Dane Cty
2008 WI App 120
313 Wis. 2d 508

5) Ct not required to dismiss CHIPS petition based on stipulation of parties

§ 48.297(4), § 48.19(3)
§ 48.193(3), § 938.297(4)
§ 938.19(3)

B. Taking child/Juv/AEM into custody considered an "arrest" for certain motions, including but not limited to

1) Propriety or lawfulness of the taking into custody

JDB v N Carolina
131 S. Ct. 2394 (2011)

2) Suppression of evidence or statements

§ 48.297(5)
§ 938.297(5)

C. If child/Juv/AEM in custody and Ct grants motion to dismiss based on defect in petition or citation or in institution of proceedings

1) Ct may order continued custody for up to 48 hours

2) New petition or citation must be filed or case is dismissed

a. If case dismissed, proceedings may be recommenced later, so long as applicable time periods have not expired

§ 48.297(6)
§ 938.297(6)

D. Motion required to be served on child/Juv may be served on Atty

E. Prosecutor may move to have audiovisually recorded deposition of child victim or witness

1) See **Sec. 11.** below

§ 48.297(7), § 807.13(1)
§ 938.297(7)

F. Oral argument on motions may be heard by telephone

§ 48.31(2)
§ 967.04(7)–(10)
§ 938.31(2), § 908.08

11. Audiovisually Recorded Depositions or Statements of Child Victim or Witness

A. Definitions

§ 950.02(1)

1) Child—person less than 18 years of age

§ 950.02(4)

2) Victim—person against whom crime has been committed

§ 950.02(5)

3) Witness—person who has been or is expected to be summoned to testify for prosecution, or who by reason of having relevant information is subject to call or likely to be called as witness for the prosecution, whether or not any action or proceeding has yet been commenced

§ 967.04(7)(a)

B. Deposition may be ordered by Ct or on motion of any party, after hearing

St v Thomas
150 Wis. 2d 374 (1989)

1) Ct must exercise discretion before ordering audiovisual recording of deposition

a. Entails finding by Ct that purpose of statute to protect child-witness from further traumatization by the legal process will be served by taking audiovisual recording of deposition

St v Wachsmuth
166 Wis. 2d 1014
(CA 1992)

b. Ct does not erroneously exercise discretion if it examines proven facts, applies correct standard of law, and using demonstrated rational process, reaches conclusion reasonable judge could reach

2) Trial or hearing in which child may be called must commence

a. Before child's 12th birthday, OR

Coy v Iowa
108 S. Ct. 2798 (1988)
St v Thomas
150 Wis. 2d 374 (1989)

- Ct cannot rely exclusively on legislative declaration. Ct must find demonstrated reasonable basis under facts of particular case with respect to particular witness before deposition may be ordered

b. Before child's 16th birthday and Ct finds interests of justice warrant that child's testimony be recorded

§ 967.04(7)(b)

3) Ct may consider following factors (not limited by enumeration) in determining interests of justice

a. Child's chronological age, level of development, and capacity to comprehend significance of events and to verbalize them

b. Child's general physical and mental health

c. Whether events about which child will testify constituted criminal or antisocial conduct against child or person with whom child has a close emotional relationship

- If conduct constitutes physical or sexual assault, duration and extent of physical or emotional injury caused

d. Child's custodial situation and attitude of other household members to events about which child will testify and to underlying proceeding

e. Child's familial or emotional relationship to Def

f. Child's behavior at or reaction to previous interviews concerning events involved

g. Whether child blames self for events involved or has ever been told by any person not to disclose them

h. Whether child's prior reports to associates or authorities of event have been disbelieved or not acted upon

i. Child's subjective belief regarding what consequences to self, or persons with whom child has close emotional relationship, will ensue from providing testimony

j. Whether child manifests or has manifested symptoms associated with post-traumatic stress disorder or other mental disorders, including, without limitation

- Re-experiencing the events or fear of their repetition

- Withdrawal, regression, guilt, anxiety, stress, nightmares, enuresis

- Lack of self-esteem, mood changes, compulsive behaviors, school problems, delinquent or antisocial behavior, phobias, or changes in interpersonal relationships

k. Number of separate investigative and judicial proceedings at which child's testimony may be required, likely length of time until last such proceeding, and mental or emotional strain associated with keeping child's recollection of events witnessed fresh for that period of time

l. Whether procedures for recording deposition by audiovisual means would reduce mental or emotional strain of testifying and whether deposition could be used to reduce number of times child required to testify

§ 967.04(8)

C. Conduct of deposition to be recorded by audiovisual means

§ 967.04(8)(a)

1) Ct must preside at taking of deposition

§ 967.04(8)(b)

2) Ct must do ALL the following

a. Schedule deposition on date when child's recollection likely to be fresh and at time of day when child's energy and attention span are greatest

b. Schedule deposition in room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to child's developmental level

c. Order a recess whenever energy, comfort, or attention span of child warrants

d. Determine that child understands it is wrong to tell a lie and will testify truthfully if child's developmental level or oral skills are such that administration of oath or affirmation in usual form would be inappropriate

e. Before questioning by parties begins, attempt to place child at ease, explain to child purpose of deposition, and identify all persons attending

f. Allow any questioner to have an advisor to assist and, upon permission of the Judge, to conduct questioning

g. Supervise spatial arrangements of room and location, movement, and deportment of all persons in attendance

St v Thomas
150 Wis. 2d 374 (1989)

- In supervising spatial arrangements, Ct may exercise its discretion and permit screen between Def and child

- An exception to constitutional right of face-to-face confrontation may be recognized when there are case-specific and witness-specific findings of necessity

h. Allow child to testify while sitting on floor, platform, appropriately sized chair, or lap of trusted adult, or while moving about room within range of visual or audio recording equipment

i. Bar or terminate attendance of any person whose presence is not necessary to taking of deposition, or whose behavior is disruptive of deposition or unduly stressful to child

j. Allow reasonable number of persons deemed by Ct supportive of child or any Def if considered necessary to taking of deposition

k. Permit Def to be in position from which s/he can communicate privately and conveniently with counsel

l. Upon request, make appropriate orders for discovery and examination by Def of documents and other evidence in possession of State that are relevant to issues to be covered at deposition at reasonable time before deposition

§ 967.04(8)(a)
§ 885.44–.47

3) Ct must enforce applicable statutes

a. Regarding audiovisual recording procedures and playback equipment

b. Objections and rulings must be made as if at trial

§ 967.04(9)

D. Admission of audiovisual recording of deposition

1) Ct may admit recorded deposition taken as above without additional hearing under § 908.08

§ 967.04(10)

a. If audiovisual recording of deposition admitted, child may not be called as witness at proceeding in which admitted, UNLESS

- Ct or hearing examiner orders upon showing that additional testimony by child required in interest of fairness

- Party seeking to call child must show testimony required for reasons neither known nor discoverable at time of deposition

St v Thomas
150 Wis. 2d 374 (1989)

2) Audiovisual recording of deposition is not hearsay

a. Deposition is functional equivalent to live in-Ct testimony

b. Unavailability of child witness/victim not required

§ 908.08

E. Admission of audiovisual recording of statement

1) Ct may admit audiovisual recording of statement of child who is available to testify

St v Tarantino
157 Wis. 2d 199
(CA 1990)

a. Audiovisual recording of child's preliminary hearing testimony is "oral statement" within plain meaning of § 908.08

b. Admission of audiovisually recorded preliminary hearing testimony of an available declarant is exception to hearsay rule

§ 908.08(2)(a)

2) Party offering statement must, at least 10 days before trial, unless Ct permits later filing for cause

a. File with Ct offer of proof showing caption of case, name and present age of child who has given statement, date, time, and place of statement, and name and business address of camera operator

b. Give notice of offer of proof to all other parties

- Including notice of reasonable opportunity for them to view audiovisually recorded statement before trial or hearing

§ 908.08(2)(b)

3) Before trial or hearing, Ct must conduct hearing on statement's admissibility

St v Mercado
2021 WI 2, ¶¶ 45–47
395 Wis. 2d 296

a. At or before hearing, Ct to view audiovisually recorded statement. Ct must review only those portions necessary to make requisite findings under § 908.08(3)

§ 908.08(7)
St v Mercado
2021 WI 2, ¶¶ 54–68
395 Wis. 2d 296
St v Sorenson
143 Wis. 2d 226 (1988)

b. At hearing, Ct to rule on objections to admissibility in whole or in part

§ 885.44(12)

c. If trial or fact-finding hearing to be before a jury, Ct to enter order for editing

§ 908.08(3)(a)–(e)

4) Ct to admit statement upon finding all the following

a. That trial or hearing in which recording is offered will commence

- Before child's 12th birthday, OR

- Before child's 16th birthday and interests of justice warrant admission

b. That recording is accurate and free from excision, alteration, and visual or audio distortion

St v Marks
2022 WI App 20
402 Wis. 2d 285
pet for rev denied

- Merging of audio and video is not necessarily altering

c. That child's statement was made upon oath or affirmation or upon child's understanding that false statements are punishable and of importance of telling the truth

d. That time, content, and circumstances of statement provide indicia of its trustworthiness

e. That admission of statement will not unfairly surprise any party or deprive any party of fair opportunity to meet allegations made in statement

§ 908.08(4)
§ 967.04(7)(b)

5) In determining whether interests of justice warrant admission of audiovisual recording of statement of child between 12 and 16, Ct to consider same factors as in determining whether to order audiovisual recording of deposition in interests of justice, including whether the admission of the recording would reduce the mental or emotional strain of testifying or reduce the number of times the child would be required to testify. See **Sec. B.**3) above

St v Tarantino
157 Wis. 2d 199
(CA 1990)

- Ct should exercise its discretion to balance factors

- Ct should explain reasons for decision

§ 908.08(5)

6) If statement admitted

a. Party who offered statement may call child to testify immediately after statement shown to trier of fact

b. If offering party does not call child, Ct, upon request by any other party, must order that child be produced immediately following showing for cross-examination

St v Tarantino
157 Wis. 2d 199
(CA 1990)

- Subsection satisfies substantive due process in building confrontation opportunity into its procedures

- Statute represents proper balancing of need to control traumatizing of children as result of testimonial experience and Def's right to fair trial

§ 908.08(6)

F. Discoverability of audiovisually recorded statements

§ 48.293(3)
§ 938.293(3)

1) Upon request, before fact-finding hearing, DA to disclose to child/Juv, through his/her Atty or GAL and to UC's GAL existence of any audiovisual recording of oral statement of child in his/her possession, custody, or control

   a. DA to make reasonable arrangements for requesting person to view recording

2) If DA obtains possession, custody, or control of audiovisually recorded statements after para. 1) above, s/he must promptly notify requesting person and make reasonable arrangements for requester to view recording

12. Discovery

§ 48.293(1)
§ 938.293(1)

A. Copies of all peace officers' reports must be made available upon request to Atty or GAL and CASA before plea hearing

1) Available through prosecutor

§ 938.12
§ 938.125
§ 938.13(12)

2) Juv through Atty or GAL only party to have access to reports in civil law or ordinance violations or when delinquent act alleged

§ 905.10

3) Identity of confidential informant may be withheld

§ 48.293(2)
§ 938.293(2)

B. All records relating to (unborn) child/Juv/AEM relevant to proceeding must be open to inspection to Atty or GAL for any party and CASA upon demand and presentation of releases, when necessary, at least 48 hours before hearing

1) May obtain copies with permission of records custodian or Ct

2) Ct may require that specific items not be disclosed to child/Juv, parent, or AEM if reasonably believes disclosure would be harmful to interests of (unborn) child/Juv

3) Sec. 48.293(2) does not apply to guardianship procedure under § 48.9795

C. Statutory discovery

§ 938.293(2)

1) In delinquency proceedings, criminal discovery statute, § 971.23 applies, except that Ct will establish timetable for

a. Prosecutor's disclosures under § 971.23(1) (including list of witnesses and wiretap evidence) and Juv's statements under § 971.23(2m)

b. Notice of alibi

c. DNA testing

TMJ v St (In Int of TMJ)
110 Wis. 2d 7 (CA 1982)

2) Before waiver hearing, Juv does not have broad discovery rights under this section

§ 48.293(4)

3) In Ch 48 actions, Ch 804 and § 48.293 apply

a. Statute supersedes *St v Tammy F*, 196 Wis. 2d 981 (CA 1995)

§ 48.293(3)
§ 938.293(3)

D. Audiovisually recorded statements

1) Upon request, before fact-finding hearing, prosecutor to disclose existence of audiovisually recorded statements of child/Juv within possession, custody, or control of State and make reasonable arrangements for viewing them

St v Dionicia M
(In Int of Dionicia M)
2010 WI App 134
329 Wis. 2d 524
See also St v Jerrell CJ
(In Int of Jerrell CJ)
2005 WI 105
283 Wis. 2d 145

2) Ct discussed feasibility to record statements in *Dionicia M.*

13. Informal Disposition/Deferred Prosecution Agreements

A. See JV 2 Initiation of Proceedings, Sec. 3, this Benchbook

§ 48.32, § 938.32

14. Consent Decree

§ 48.32(1), § 938.32(1)
RMC Form JD-1784A
RMC Form JD-1784B
RMC Form JD-1785A
RMC Form JD-1785B

A. Before entry of judgment in delinquency, JIPS, CHIPS, or UCHIPS, Ct or CCC may suspend proceedings and place child/Juv/AEM under supervision in child's/Juv's/AEM's home or present placement

1) May establish terms and conditions applicable to parent, guardian or legal custodian, and child/Juv/AEM

§ 48.32(1b)

2) May request CASA program to designate CASA for child

§ 938.32(1d)

3) Ct may use approved volunteers in probation program as part of consent decree if

a. Such program exists in Juv's Cty of residence, and

b. Juv has committed an offense that would be a misdemeanor if committed by an adult

§ 938.32(1g)

4) If petition alleges Juv committed a violation under Ch 961 and MDS shows Juv at risk of having needs and problems related to use of alcohol beverages or controlled substances, decree may include condition

a. That Juv participate in outpatient treatment from treatment facility for AODA if assessment completed

§ 938.32(1r)

- Juv, or Juv's parent, guardian, or legal custodian if Juv under age 12, must execute informed consent

b. That Juv participate in Ct-approved education program related to AODA

§ 938.32(1t)

5) If petition alleges damage to property or physical injury to victim(s), Ct may order restitution and/or community service hours as condition of consent decree

a. For Juvs ages 10 to 13, no more than 40 hours of community service may be ordered, and restitution ordered cannot exceed $250 for each consent decree

b. If restitution ordered, finding must be made that Juv alone is financially able to pay it or physically able to perform services

§ 938.32(1p)

6) Order Juv to report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming of center

a. After school

b. In evening

c. On weekends

d. On other nonschool days, or

e. At any other time Juv not under immediate adult supervision

§ 48.32(1)(a)
§ 938.32(1)(a)

7) Must be agreed to by

a. CHIPS child age 12 or older, delinquent or JIPS Juv of any age, CEM of any age, or AEM

b. Parent, guardian, or legal custodian of child

St v CGB (Int of CGB)
2017 WI App 32
375 Wis. 2d 781

c. Person filing petition

d. UC's GAL

8) May include provisions for payment for services

9) Must include provisions of payment for AOD services

10) Must be reduced to writing and given to parties

§ 48.32(2)(a)
§ 938.32(2)(a)

11) Will remain in effect up to 6 months for CHIPS/UCHIPS and up to one year for JIPS and delinquents unless discharged sooner by Ct

§ 48.32(1)(b)1.
§ 938.32(1)(c)1.

12) If consent decree maintains child/Juv in existing out-of-home placement, consent decree shall include:

a. Finding that placement of child/Juv at home is contrary to welfare of child/Juv

b. Finding whether responsible department/agency has made reasonable efforts to prevent removal of child/Juv from home while assuring child's/Juv's health and safety are paramount (unless reasonable efforts not required)

§ 48.32(1)(b)1.c.
§ 938.32(1)(c)1.c.

c. If permanency plan previously prepared for child/Juv, finding whether responsible agency has made reasonable efforts to achieve permanency goal of permanency plan, including, if appropriate, out-of-state placement, AND

d. If child/Juv is under supervision of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more), order ordering child/Juv into placement and care responsibility of that agency and assign it primary responsibility

for providing services

§ 48.32(1)(b)1r.
§ 938.32(1)(c)1r.

e. If the child/Juv is placed in an RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, a finding as to each of the following, the answers to which do not affect whether the placement may be made, after considering the standardized assessment under § 48.32(1)(ar)/§ 938.32(1)(br):

- Whether needs of child/Juv can be met through placement in a foster home
- Whether placement of child/Juv in RCCCY, group home, or shelter care facility certified under § 48.675 provides most effective and appropriate level of care for child/Juv in least restrictive environment
- Whether placement is consistent with short-term and long-term goals for the child/Juv, as specified in permanency plan
- Whether the Ct approves or disapproves the placement

§ 48.32(1)(b)1m.
§ 938.32(1)(c)1m.

f. If child/Juv has one or more siblings who have also been removed from home, include finding about whether responsible agency has made reasonable efforts to place child/Juv in placement that enables sibling group to remain together

- BUT if Ct determines that joint placement would be contrary to child's/Juv's/siblings' safety or well-being, then Ct must order responsible agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between child/Juv and siblings, unless contrary to child's/Juv's/siblings' safety or well-being

g. BUT if Ct finds that no reasonable efforts are necessary under § 48.355(2d)(b) or § 938.355(2d)(b), consent decree shall so find and need not include determination that reasonable efforts have been made to achieve permanency goal of permanency plan if permanency goal is return home

§ 48.32(1)(c)
§ 938.32(1)(d)

- Ct must hold hearing within 30 days after finding that reasonable efforts are not required to determine permanency goal and, if applicable, any concurrent permanency goals for child/Juv

§ 48.38(4m)(b)
§ 938.38(4m)(b)

— No less than 10 days before hearing, Ct shall send notice of time, place, and purpose of hearing, of issues to be determined at hearing, and of right to be heard, to child/Juv, parent, guardian, or other legal custodian, foster parent, or other physical custodian defined in § 48.62(2), operator of facility in which child/Juv is living, relative with whom child/Juv is living, and Indian child's/Juv's Indian custodian and tribe

§ 48.38(4m)(a)
§ 938.38(4m)(a)

— No less than 5 days before hearing, responsible agency shall file permanency plan

§ 48.38(4m)(d)
§ 938.38(4m)(d)

— Those receiving notice may make oral or written statement at hearing

§ 48.32(1)(d)1.
§ 938.32(1)(e)1.

h. Finding supported by clear and convincing evidence, including testimony of one or more qualified expert witnesses, that continued custody of Indian child/Juv by parent or Indian custodian is likely to result in serious emotional or physical damages to the child/Juv under § 48.028(4)(d)1. or § 938.028(4)(d)1. and a finding that active efforts under § 48.028(4)(d) or § 938.028(4)(d)2. have been made to prevent the breakup of the Indian child's/Juv's family and that those efforts have proved unsuccessful

§ 48.32(1)(d)2.
§ 938.32(1)(e)2.

i. If placement deviates from order of placement preferences of § 48.028(7)(b) or (c)/§ 938.028(6)(a) or (b), Ct must find good cause for departing from that order

§ 48.32(6)
§ 938.32(6)

13) Ct must inform child/Juv/AEM, parent, guardian, or legal custodian, in writing of

a. Child's/Juv's/AEM's right to object to continuation of consent decree

b. Fact that fact-finding hearing may be continued to conclusion as if consent decree never entered

§ 48.32(1)(am)
§ 938.32(1)(bm)

B. Consent decree may be amended

§ 48.32(1)(b)1., (d)1.
§ 938.32(1)(c)1., (e)1.

1) Upon agreement, may revise placement. If placement to out-of-home, ASFA/ICWA findings required

§ 48.32(2)(c)
§ 938.32(2)(c)

C. Consent decree may be extended up to <u>additional 6 months</u> in absence of objection by parties

1) Upon motion of Ct or application of child/Juv/AEM, UC's GAL, parent, guardian, legal custodian, intake worker or agency supervising child/Juv/AEM

2) Ct must give notice to parties, Attys/GALs, and child's CASA

3) If child, parent, guardian, or legal custodian, AEM, or UC's GAL objects, Judge must hold hearing and make determination on issue of extension

4) Extension of consent decree to alleged UCHIPS may be granted after child born

§ 48.32(3)
§ 938.32(3)

D. If child/Juv/AEM, parent, guardian, or legal custodian fails to fulfill express terms and conditions or child/Juv/AEM objects to continuation of consent decree

St v Sarah RP
(In Int of Sarah RP)
2001 WI App 49
241 Wis. 2d 530

1) Ct finding of failure must be made before discharge or expiration

2) Hearing under which child/Juv/AEM placed on supervision continues to conclusion as if consent decree never entered

§ 895.035(2m)
RMC Form JD-1761

3) If, after expiration of consent decree, restitution not paid, unpaid restitution may be docketed as judgment against Juv and parent with custody

a. See **Sec. 7. in JV 8**, Disposition

§ 938.32(4)

E. Juv who is discharged by Ct or completes supervision without reinstatement of original petition MAY NOT be proceeded against for same offense

1) Original petition must be dismissed with prejudice

2) May not bring an action based on same conduct

§ 895.035

3) Does not preclude civil suit for damages arising from Juv's conduct

§ 48.32(5)
§ 938.32(5)

F. If Ct elicits or examines information inadmissible at fact-finding hearing and party objects, Ct may not participate in further proceedings if

1) Ct refused consent decree and allegations remain to be decided at fact-finding

2) Consent decree is granted but delinquency, CHIPS, UCHIPS, or JIPS petition is subsequently reinstated

Recommendation

3) If Ct accepts admission or no contest plea before entry of consent decree, Ct can withhold finding of delinquency CHIPS, UCHIPS, or JIPS in order to utilize a consent decree and eliminate the potential for a fact-finding hearing, if, at later date, consent decree is vacated

§ 48.315(1)(e)
§ 938.315(1)(a)6.

G. Delays resulting from imposition of consent decree are excluded in computing time requirements of Children's Code and Juv Justice Code

JV 7: FACT-FINDING HEARING IN CHIPS, JIPS, AND DELINQUENCY

§ 48.30(7), § 938.30(7)

1. Time Periods

§ 48.299(9), § 938.299(10)

A. For ICWA cases, see JV 17

§ 48.315(3)
§ 938.315(3)

B. If Ct or party fails to act within applicable time periods, Ct does not lose personal or subject-matter jurisdiction. Failure to object to delay or continuance waives challenge of Ct's competency to act

§ 48.30(7)
§ 938.30(7)

C. No more than 20 days after plea hearing for child/Juv in secure custody (unless § 48.299(9) or § 938.299(10) applies)

D. No more than 30 days after plea hearing for child/Juv/AEM NOT in secure custody (unless § 48.299(9) or § 938.299(10) applies)

§ 48.305
§ 938.305

1) EXCEPT that Ct must schedule plea and fact-finding hearing within 30 days at request of parent, guardian, or AEM if

§ 48.19(1)(c), (cm)
§ 938.19(1)(c)

a. Child/Juv removed from parent or guardian by Ct order

§ 48.193(1)(c)

b. AEM taken into custody by Ct order

§ 48.19(1)(d)5.
§ 938.19(1)(d)5.

c. Law enforcement believes child/Juv suffering from illness or injury or in immediate danger from surroundings

§ 48.19(1)(d)8.
§ 48.193(1)(d)2.

d. Law enforcement believes EM endangering UC by habitual lack of self-control in use of AOD exhibited to a severe degree

§ 48.305
§ 938.305

2) This time period may be extended only with consent of requesting parent, guardian, or AEM

§ 48.315(2)
§ 938.315(2)
St v Michael S
(In Int of Michael S)
2005 WI 82, 282 Wis. 2d

1 *Waukesha Cty v*
Darlene R
(In Int of Victoria R)
201 Wis. 2d 633
(CA 1996)

E. Good cause finding must be made by the Ct on the record when delay or adjournment granted

§ 48.315(2m)
§ 938.315(2m)

1) A continuance does not extend time periods for required ASFA findings

§ 938.315(2)

2) Interest of victims must be considered

3) See **Sec. 1. in JV 3**, Time Constraints

§ 48.31(7)
§ 938.31(7)

F. At conclusion of fact-finding hearing, if child/Juv/UC found CHIPS, UCHIPS, delinquent, or JIPS, Ct may immediately proceed with dispositional hearing (subject to § 48.299(9)/§ 938.299(10)) if

1) All parties consent, and

§ 48.33
§ 938.33

2) Ct report requirements met, including parent financial information if out-of-home placement recommended or may occur

3) Victim notification requirements met

2. Right to Counsel

A. See Sec. 2, Right to Counsel, in JV 2 and Sec. 2.C.1), in JV 17 (ICWA)

3. Procedure

SCR 71.01

A. Hearing must be recorded

B. Personal appearance

Waukesha Cty DHHS
v Teodoro E (In re TPR
to Adrianna AE)
2008 WI App 16
307 Wis. 2d 372

1) Alternative to personal appearance of contesting party in TPR proceeding acceptable only if alternative affords meaningful participation in proceedings

§ 938.299(5)(a)
§ 938.325

2) For Ch 938 cases, proceedings may be conducted by telephone or live audiovisual means

§ 938.299(5)(b)

If objection by Juv or prosecutor, Ct must determine whether hearing is at a critical stage and, if so, Ct must sustain objection

§ 48.31(1), § 938.31(1)

C. Burden of proof

1) Beyond a reasonable doubt for alleged delinquent; JIPS alleged to have committed a delinquent act; or ICWA TPR when serious emotional or physical damage to child is alleged

2) Clear and convincing evidence for

a. CHIPS/UCHIPS

b. JIPS under § 938.13(4), (6), (6m), (7), or (14)

c. TPR (for exceptions see **JV 13**; see also para. 1), *supra*, for exception in ICWA TPR cases)

d. Civil law or ordinance citation

e. Note: If issues of competency or plea of NGI, see **JV 6**

D. Form of hearing—jury or Ct

§ 48.31(2)

1) In CHIPS/UCHIPS cases, trial to Ct unless jury demanded before or during plea hearing

a. Child, parent, guardian or legal custodian, UC's GAL, and AEM have right to request jury trial in Ch 48 action

- In § 48.13 and § 48.133 action, jury shall consist of 6 persons
- In § 48.42 action (TPR), jury shall consist of 12 persons, unless parties agree to lesser number

Ch 756, Ch 805
§ 48.31(2)

b. Civil rules regarding selection of jurors apply

§ 938.31(2)

2) In Ch 938 actions (including ordinance violations), fact-finding shall be to the Ct

St v Hezzie R
(In Int of Hezzie R)

219 Wis. 2d 848 (1998)

a. Denial of jury trial in delinquency proceeding not unconstitutional

NE v DHSS
(In Int of NE)
122 Wis. 2d 198 (1985)

3) Child's right to jury trial, once demanded, must be withdrawn personally by child either in writing or on record in open Ct

§ 48.299(3)

E. Child must be present unless

1) Ct finds it in best interests of child with counsel's and GAL's consent to temporarily exclude child from CHIPS hearing

2) Ct finds child under 7 years too young to comprehend hearing and in child's best interests to be excluded from entire hearing

§ 48.299(1)
§ 938.299(1)

F. If public hearing not demanded, general public excluded from fact-finding hearing

§ 48.299(1)(a)

1) Public fact-finding hearing may be demanded by child, EM, or UC, but hearing may not be public if parent, guardian, EM, or UC objects

2) Persons who may be present

a. Parties

b. Counsel/GAL/CASA

§ 48.299(1)(ag)
§ 938.299(1)(ag)

c. Child's/Juv's foster parent or physical custodian, who may be excluded from portion of hearing dealing with sensitive personal information or if exclusion in child's/Juv's best interest

d. Witnesses

e. Anyone requested by party and approved by Ct

f. Anyone Ct finds to have proper interest in case or work of Ct, including Attys or a person engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

- Representative of news media who wishes to report news without revealing identity of Juv involved must be permitted to attend

§ 938.299(1)(am)

g. Victim, victim's family member, and representative of victim's organization may attend any hearing for alleged act against victim, but may be excluded from portion of hearing dealing with sensitive personal information not directly related to alleged act

§ 48.299(1)(b)
Ch 785
§ 938.299(1)(b)

3) Except as provided in § 48.375(7)(e), § 48.396, and § 938.396, or when a public hearing is held, anyone who divulges information that would identify child/Juv/EM or family subject to contempt of Ct

§ 938.299(1)(ar)
Appendix 1
SJO Offenses

G. General public may always attend fact-finding hearing when Juv charged with

1) Violation that would be a felony if committed by an adult, and Juv has prior adjudication of delinquency of record and unreversed, or

2) SJO violation

a. See **Appendix 1**, SJO Offenses, for list of violations

H. Use of restraints (shackling)

§ 48.299(2m)
§ 938.299(2m)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m) or § 938.299(2m). *See infra* **Appendix 13**

§ 48.299(4)(a)
§ 938.299(4)(a)

I. Rules of evidence apply

§ 906.09(1)–(3)

1) Evidence of witness's prior delinquency adjudication, admissible for purpose of attacking character for truthfulness, subject to § 906.09 and § 901.04

§ 48.31(2), § 938.31(2)
§ 967.04(7)–(10)

J. Special provisions for child witness

1) Definitions

§ 950.02(1)

a. Child—person less than 18 years of age

§ 950.02(5)

b. Witness—person who has been or is expected to be summoned to testify for prosecution, or who by reason of having relevant information is subject to call or likely to be called as witness for prosecution

§ 906.01, § 906.03

2) Child as witness

St v Dwyer
149 Wis. 2d 850 (1989)

a. Child may not be disqualified as witness on basis of incompetency, except as stated in rules

St v Hanson
149 Wis. 2d 474 (1989)

b. Child witness need not be formally sworn. Administration of oath or affirmation within Ct's discretion

§ 48.31(2)
§ 967.04(7)–(10)

3) Audiovisually recorded depositions (See **JV 6, Sec. 11**, for conduct and use of depositions)

a. May be ordered by Ct on motion of any party if substantial likelihood child will otherwise suffer severe emotional or mental strain

b. Ct may allow audiovisually recorded deposition at trial

- In addition to direct testimony of child, or

St v Thomas
150 Wis. 2d 374 (1989)

- In lieu of direct testimony of child if Def had opportunity to cross-examine at time of taking deposition

§ 967.04(7)–(10)

c. Ct may specify

- Where deposition is taken
- Who may be present during deposition
- May exclude unnecessary persons

d. If DA anticipates using audiovisually recorded deposition at trial

- Examination and cross-examination proceeds in same manner as at trial

§ 971.105

4) Ct and DA must take appropriate action to ensure speedy trial to minimize length of time child must endure stress of involvement in proceedings

a. If request for delay or continuance, Ct must consider and give weight to any adverse impact it may have on child's well-being

§ 48.31(4)
§ 48.13(11)

5) Special requirements for allegations of CHIPS because of emotional damage

a. No finding of "serious emotional damage" may be made unless

- Licensed psychiatrist or psychologist appointed by Ct to examine child testifies that in his/her opinion the condition exists
- Adequate opportunity to cross-examine psychiatrist or psychologist is afforded

b. Judge may use written reports if right to have testimony presented is voluntarily, knowingly, and intelligently waived by

- GAL or Atty for child, and
- Parent or guardian

§ 48.31(4)

6) Special requirement for allegation of CHIPS/UCHIPS because of AODA impairment

§ 48.13(11m)
§ 48.547(4)
§ 48.133

a. Ct may not find CHIPS or EM in need of treatment and education for AODA unless assessment conducted by approved treatment facility

- MDS under § 48.547(3), (4) may be used for this purpose

CML v St (In Int of CML)
157 Wis. 2d 152
(CA 1990)

K. Trial Ct's duty to determine, on motion for JNOV, whether jury verdict is supported by evidence, is part of fact-finding hearing

4. Findings of Fact and Conclusions of Law

§ 938.12, § 938.13(12)

A. Allegations of delinquency or JIPS

§ 938.31(2)

1) Ct must make determination of facts

St v Hezzie R
(In Int of Hezzie R)
219 Wis. 2d 848 (1998)

a. Lack of right to jury trial in delinquency proceedings not unconstitutional

b. However, constitution does not allow Juv adjudicated delinquent to be placed in adult prison pursuant to SJO disposition without the opportunity for a jury trial

§ 938.31(4)

2) Ct must make findings relating to proof

a. Of violation of law

b. That Juv named committed alleged violation

§ 938.30(5)(a)2.

3) If allegations have been proved after plea of denial and not responsible for acts by reason of mental disease or defect, Ct immediately proceeds to hearing on responsibility

§ 938.30(5)(c)

a. If Ct finds Juv not responsible by reason of mental disease or defect

- Ct must dismiss delinquency action with prejudice, AND
- Order filing of petition under Ch 51, or
- Order filing of JIPS petition under § 938.13(14)

§ 938.30(5)(b)

b. If Ct finds Juv responsible, Ct to proceed to dispositional hearing

§ 48.13, § 48.133

B. Allegation of CHIPS/UCHIPS

§ 48.31(2)
St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563

1) Ct or jury must make determination of facts as of date petition was filed

St v Aimee M
194 Wis. 2d 282 (1995)

a. In CHIPS jury trial, Ct must submit separate verdict question for each § 48.13 basis alleged for which evidence is adduced at trial

§ 48.31(2)
St v Courtney E
(In Int of Courtney E)
184 Wis. 2d 592 (1994)
St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563

2) Ct must make conclusions of law relating to whether (unborn) child in need of protection and services that can be ordered by Ct

5. Judge's Action at Close of Hearing

§ 48.31(2)
§ 938.31(2)

A. If allegations have not been proved, or (unborn) child/Juv not within jurisdiction of Ct, Ct must dismiss with prejudice

§ 48.31(7), § 938.31(7)

B. If allegations proved

1) Schedule dispositional hearing (subject to § 48.299(9)/§ 938.299(10))

a. Within 10 days for child/Juv in secure custody

b. Within 30 days for child/Juv/AEM not in secure custody

CML v St (In Int of CML)
157 Wis. 2d 152
(CA 1990)

c. After jury trial, if motion for JNOV, time periods for disposition are from date Judge decides motion

2) May immediately proceed with dispositional hearing if

§ 48.31(7), § 938.31(7)

a. All parties consent (subject to § 48.299(9)/§ 938.299(10)), and

§ 48.33
§ 938.33

b. Ct report requirements met, including parent financial information if out-of-home placement recommended or may occur, and

§ 938.331
§ 938.335(3m)
§ 950.04(1v)(pm)

c. Victim given notice and opportunity to provide information on economic, physical, and psychological effect of a felony offense

§ 48.38(3)
§ 938.38(3)
CAUTION

3) If child/Juv in out-of-home placement or custody, permanency plan must be filed with Ct within 60 days after date child/Juv first removed from home (subject to § 48.38(4m)(a)/§ 938.38(4m)(a))

Recommendation

4) If child in custody or out-of-home placement, review reasonable efforts findings

5) See also **JV 9**, **ASFA**

§ 938.185(1)(c)

6) Ct may transfer proceeding to Cty where Juv resides for disposition if Ct of Cty of residence agrees to transfer

C. If Juv found not responsible by mental defect or disorder, see JV 6

JV 8: DISPOSITION

1. Dispositional Hearing

§ 48.335
§ 938.335

A. Child/Juv must be adjudicated delinquent, JIPS, CHIPS, or UCHIPS before disposition entered

§ 938.125
§ 938.237

1) If Juv violated civil law or ordinance, dispositional hearing must be held UNLESS citation issued and not contested

a. See **JV 10** for procedure and dispositions in civil law or ordinance violation cases

§ 938.335(3m)(ag), (am)

B. Before imposing disposition in delinquency under § 938.12 or JIPS under § 938.13(12), Ct must determine whether victim wishes to make statement

Ct must inquire of DA or Corp Counsel whether he or she has made reasonable attempt to contact any known victim to inform him/her of right to make statement at hearing

C. Dispositional hearing is mandatory

§ 48.335(3)
§ 938.335(3)

1) Any party may present evidence on disposition and make alternative recommendations

2) Expert testimony may be given

§ 48.335(4)

3) For Ch 48 cases, Ct may admit testimony on record by telephone or live audiovisual means

a. At request of any party

- Request may be by telephone

b. Unless good cause to contrary shown

- Showing of good cause may be by telephone

§ 938.325

4) For Ch 938 cases, proceedings may be conducted by telephone or live audiovisual means, unless good cause to the contrary is shown

a. Access shall be provided to persons entitled to attend by loudspeaker or live audiovisual means or, upon request to Ct, by telephone without charge

b. Proceedings shall be reported by a Ct reporter

§ 48.335(3r)
§ 938.335(3r)

5) Parent may present evidence relevant to amount of child support to be paid by either or both parents

D. Time periods

§ 48.30(6), § 48.31(7)
§ 938.30(6), § 938.31(7)

1) Dispositional hearing must be held (subject to § 48.299(9)/§ 938.299(10))

a. Within 10 days from adjudication for child/Juv in secure custody

b. Within 30 days from adjudication for child/Juv/EM NOT in secure custody

§ 48.315(3)
§ 938.315(3)

c. Failure of Ct or party to act within any time period does not deprive Ct of personal or subject-matter jurisdiction or of competency to exercise that jurisdiction. Ct may dismiss Ch 938 case with or without prejudice, dismiss Ch 48 case without prejudice, grant a continuance, release Child/Juv from secure or nonsecure custody or from terms of custody order, or grant any other appropriate relief

§ 48.315(3)
§ 938.315(3)

- Failure of Ct or party to object to period of delay or continuance waives objection to Ct's competency to act

CML v St (In Int of CML)
157 Wis. 2d 152
(CA 1990)

d. Hearing on motions after verdict is part of the fact-finding hearing, and therefore a dispositional hearing within 30 days after such hearing is timely

§ 48.30(6), § 48.31(7)
§ 938.30(6), § 938.31(7)

2) May immediately proceed with dispositional hearing subject to § 48.299(9)/§ 938.299(10) after finding of delinquency, CHIPS, UCHIPS, or JIPS, if

a. Petition not contested

b. All parties consent, and

§ 48.33
§ 938.33

c. Ct report requirements met

§ 938.335(3m)

d. Victim given the opportunity to make or submit statement

§ 48.315(2)
§ 938.315(2)

3) Delays, continuances, and extensions may be granted for good cause in open Ct or during telephone conference on record

a. For only as long as necessary

b. Taking into account

- Request or consent of prosecutor or parties
- Interests of the victims
- Interest of public in prompt disposition of cases

§ 48.315(2)
St v Robert K
(In re TPR to Moriah K)
2005 WI 152
286 Wis. 2d 143

c. Continuance may be granted under § 48.315(2), independent of grounds in § 48.315(1). Ct's calendar and Atty scheduling conflicts may constitute good cause. If Ct relies on § 48.315(2), it should:

- Cite statute on record
- State basis for concluding good cause exists to continue, delay, or extend hearing date
- Explain hearing not delayed longer than necessary

§ 48.315(2m)
§ 938.315(2m)

d. No continuance or extension may be granted or period of delay excluded in computing time requirement if continuance, extension, or exclusion would result in any of the following:

§ 48.315(2m)
§ 938.315(2m)

- The Ct making, more than 60 days after date child/Juv removed from home, an initial finding that continued placement of child/Juv in home would be contrary to welfare of child/Juv, that reasonable efforts have been made to prevent removal of child/Juv from home or that reasonable efforts not required under § 48.355(2d)(b)1.–5. or § 938.355(2d)(b)1.–4.
- Initial finding under § 48.38(5m) or § 938.38(5m) that agency primarily responsible for providing services to child/Juv has made reasonable efforts to achieve permanency goal of permanency plan more than 12 months after date of removal from home or subsequent findings under § 48.38(5m) or § 938.38(5m) as to reasonable efforts more than 12 months after date of previous finding as to reasonable efforts

§ 48.366(3)(am)3.
§ 938.366(3)(am)3.

- The Ct making, more than 180 days after transition-to-independent-living agreement entered into, a finding that the person's placement in out-of-home care under the agreement is in person's best interests

E. Permanency hearing, permanency review, and permanency hearing time periods

§ 48.355(2d)(c)
§ 48.38(4m)
§ 938.355(2d)(c)
§ 938.38(4m)

1) If finding that reasonable efforts not required, Ct must hold hearing to determine permanency goal and, if applicable, any concurrent permanency goals, within 30 days after finding

§ 48.38(3)
§ 938.38(3)

2) In other cases, agency must present permanency plan no later than 60 days after date that child/Juv was first removed from home, or, if agency is recommending out-of-home placement at dispositional hearing, whichever is sooner

3) Permanency reviews and permanency hearings

§ 48.38(5), § 48.21(5)(d)
§ 938.38(5)
§ 938.21(5)(d)

a. Permanency review by panel or Ct must be conducted within 6 months after date "child/Juv is removed from home" or within 30 days after a "no reasonable efforts required" finding

§ 48.38(5)
§ 938.38(5)

- 6-month reviews must be held, but may be conducted by panel

- Good-cause extensions are not permitted

§ 48.38(5m)
§ 938.38(5m)

b. Judge must hold permanency hearing not less than 12 months after removal, and every 12 months thereafter as long as child/Juv remains in out-of-home placement

§ 48.38(5)(a)
§ 938.38(5)(a)

c. NOTE: time is counted from date of removal or date of "reasonable efforts not required" finding, not date of disposition; AND 6-month/12-month periods include trial reunification

d. See **JV 9, ASFA**, for permanency review and permanency hearing requirements

§ 48.38(5)(b), (5m)(b)
§ 938.38(5)(b), (5m)(b)

e. No less than 30 days before review/hearing, Ct shall send notice of time, place, and purpose of review/hearing, of issues to be determined, and of right or opportunity to be heard, to child/Juv, parent, guardian, legal custodian, Indian child's/Juv's Indian custodian and tribe, foster parent, operator of facility in which child/Juv living, relative with whom child/Juv living, child's/Juv's counsel and GAL, child's CASA, agency that prepared permanency plan, school, person representing interests of public

- Notice to school must include name and contact information for caseworker or social worker assigned to case

§ 48.38(5)(d), (5m)(d)
§ 938.38(5)(d), (5m)(d)

f. No less than 5 days before review/hearing, responsible agency shall provide copy of permanency plan and any written comments received from those who received notice to Ct, child's/Juv's parent, guardian, legal custodian, Indian child's/Juv's Indian custodian and tribe, person representing interests of the public, child's/Juv's counsel/GAL, and child's CASA

§ 48.33, § 938.33

2. Court Report

A. Required before disposition in all delinquency, JIPS, CHIPS, or UCHIPS cases

§ 48.33(1), § 938.33(1)

B. Ct designates agency to submit written report

§ 48.293(2)
§ 938.293(2)

1) Report must be available to parties (through GAL or Atty) and CASA at least 48 hours before hearing

§ 48.33(4)

2) Written report required under Ch 48 if

§ 48.33(4)

a. Out-of-home placement recommended for child in foster home, group home, or RCCCY, in home of relative other than a parent, in home of guardian under § 48.977(2), or in a supervised independent living arrangement

§ 48.33(4)

b. Out-of-home placement for AEM recommended

§ 48.33(2), (4)
§ 938.33(2), (3), (4)

3) Other reports may be presented orally at hearing if

a. Report recommends child or EM remain at home, or Juv to remain at home, be placed in Juv correctional facility, secured RCCCY, or other out-of-home placement, and

b. All parties consent, including Juv's counsel if recommendation is for placement in Juv correctional facility or secured RCCCY, and

c. Oral report transcribed and made part of Ct record

§ 938.33(3r)

4) Serious Juvenile Offender (SJO) report must be in writing

a. Designate DOC (regional community corrections supervisor), Cty Dept, or child welfare agency to prepare report

b. Report to analyze Juv's suitability for program and recommend whether Juv should be placed in program

§ 48.33(1)
§ 938.33(1)

C. Contents of Ct report (If dealing with Indian child/Juv, see JV 17, Sec. 7)

1) Social history of child/Juv/EM

2) Recommended plan of rehabilitation or treatment and care for child/Juv/EM

   a. In Ch 48 cases, plan to employ least restrictive means available to accomplish its objectives

   b. In Ch 938 cases, plan to employ most effective means available to accomplish its objectives

   c. Based on investigation by agency, and

   d. Based on any report resulting from AOD assessment

   e. In Ch 48 cases of child abuse or neglect or unborn child (UC) abuse, plan must also include assessment of risks to (unborn) child's physical safety and health and description of plan to control risks

3) Description of specific services or continuum of services that agency recommends for child/Juv or family or EM

   a. Identity of primary agency or primary person for providing services

   b. Identity of agency or person to provide case management or coordination of services, if any

   c. Recommendation whether child/Juv should receive a coordinated services plan of care

4) Statement of plan's objectives, including

   a. Desired behavior changes of child/Juv/EM

   b. Academic, social, and vocational skills needed by child/Juv/EM

5) Plan for provision of educational services to child/Juv

   a. Prepared after consultation with school

§ 48.33(1)(f)
§ 938.33(1)(f)

6) Statement of availability of services and funding for those services if agency recommending that Ct order parent, guardian, legal custodian, or the EM to participate in mental health treatment, anger management, individual or family

counseling, or parent or prenatal development training and education

§ 938.33(3)

7) If recommending placement in a Juv correctional facility or secured RCCCY, must include paras. 1)–4) above AND

a. Description of less restrictive alternatives available and considered

b. Explanation why less restrictive alternatives inappropriate

c. If Ct finds any of conditions specified in § 938.34(4m)(b)1., 2., or 3. applies, report shall indicate a less restrictive alternative than placement in Juv correctional facility or secured RCCCY not appropriate

d. Recommendations for amount of child support to be paid by parents or for referral to Cty child support agency under § 59.53(5) for child support

§ 938.33(3r)
§ 938.34(4h)(a)
Appendix 1
SJO Offenses

8) If Juv qualifies for SJO treatment (see **Appendix 1** for list of qualifying offenses) report shall be submitted in writing and

a. Contain information in paras. 1)–6) above and para. 7) or 9), if applicable, AND

b. Shall include analysis of Juv's suitability for placement in SJO program under § 938.34(4h) or in secured RCCCY under § 938.34(4m), placement specified in § 938.34(3), or placement in Juv's home with supervision and community-based programming AND

c. Recommendation as to type of placement for which Juv best suited

§ 48.33(4)
§ 48.38(4)
§ 938.33(4)
§ 938.38(4)

9) If recommending out-of-home placement in foster home, group home, non-secured RCCCY, home of relative other than parent, home of guardian under § 48.977(2), or supervised independent living arrangement, must include paras. 1)–6) above and permanency plan (See **JV 9** for full description of permanency planning) that includes contents described in § 48.33(4)/§ 938.33(4)

§ 48.33(4)(c)
§ 938.33(4)(c)

10) If recommending out-of-home placement in foster home, group home, nonsecured RCCCY, home of relative other than parent, home of guardian under § 48.977(2), or supervised independent living arrangement, must include paras. 1)–6) and 9) above AND

a. Specific information showing continued placement in home contrary to welfare of child/Juv

b. Specific information showing Cty Dept (or DCF, if Ch 48 case in Cty with population of 750,000 or more) or primary dispositional agency has made reasonable efforts to prevent removal from home while assuring child/Juv's health and safety are paramount concerns, unless § 48.355(2d)(b)1.–5. or § 938.355(2d)(b)1.–4. applies and, if permanency plan previously prepared, specific information showing reasonable efforts made to achieve permanency goal of permanency plan, including, if appropriate, through out-of-state placement

§ 48.33(4)(cm)
§ 938.33(4)(cm)

11) If recommending qualified residential treatment program, must include statement indicating whether recommended placement is certified under § 48.675

12) Placement in RCCCY, group home, or shelter care facility

§ 48.33(4)(cr)
§ 938.33(4)(cr)

a. If Ct report recommends placement of child/Juv in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, then report shall contain results of standardized assessment and recommendation of qualified individual who conducted assessment, including all of the following:

- Whether proposed placement will provide child/Juv with most effective and appropriate level of care in least restrictive environment
- How placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan
- Reasons child's/Juv's needs can or cannot be met by child's family or in foster home. Shortage or lack of foster homes is not acceptable reason for determining that child's/Juv's needs cannot be met in foster home
- Placement preference of family permanency team under § 48.38(3m)/§ 938.38(3m) and, if that preference is not recommended by the qualified individual, why that recommended placement is not preferred

b. If information under **Sec. 2.C.**12)a. above is not available at the time of the report, the agency shall submit it by date of dispositional hearing or, if it is not available on that date, no later than 30 days after date on which placement was made

§ 48.33(4)(d)1.
§ 938.33(4)(d)1.

13) If child/Juv has one or more siblings who have been removed from the home or for whom out-of-home placement is recommended, specific information showing reasonable efforts to place child/Juv in a placement that enables sibling groups to remain together, unless report includes specific information showing joint placement would be contrary to safety or well-being of child/Juv or any of the siblings

§ 48.33(4)(d)2.
§ 938.33(4)(d)2.

a. If recommendation not for joint placement, specific information that reasonable efforts made to provide frequent visitation or other ongoing interaction between child/Juv and siblings, unless report includes specific information showing visitation or interaction would be contrary to safety or well-being of child/Juv or any siblings

§ 48.33(4)(b)
§ 938.33(3)(b), (4)(b)

14) Ct report must contain recommendations for amount of child support to be paid by parents or for referral to Cty child support agency under § 59.53(5) for child support

§ 48.33(4m)
§ 938.33(4m)

15) In making recommendation for amount of child support under para. 7) or 14) above, agency shall consider factors under § 49.345(14)(c) (in Ch 48 cases) or § 301.12(14)(c) (in Ch 938 cases). Before dispositional hearing, agency shall provide parent with

a. Copy of its recommendation for child support

b. Written explanation how parent may request Ct may modify amount of support under § 49.345(14)(c) (in Ch 48 cases) or § 301.12(14)(c) (in Ch 938 cases)

c. Written explanation of how parent may request revision under § 48.363 or § 938.363 in amount of child support ordered under § 48.355(2)(b)4. or § 938.355(2)(b)4.

§ 938.331

16) If delinquent act would be a felony if committed by adult, Ct report must also attempt to determine economic, physical, and psychological effect on victim

a. May ask any appropriate person for information

b. Does not preclude including any information for Ct concerning impact on victim

c. If not a felony but victim suffered bodily harm, theft, or damage to property, preparer encouraged to seek above information

§ 48.33(4)(dm)
§ 938.33(4)(dm)

17) If agency knows or has reason to know child/Juv is an Indian child/Juv who is being removed from home of parent or Indian custodian

a. Description of any efforts undertaken to determine whether child/Juv is Indian child/Juv

b. Specific information showing that continued custody of child/Juv by parent or Indian custodian is likely to result in serious emotional or physical damage to child/Juv under § 48.028(4)(d)1./§ 938.028(4)(d)1.

c. Specific information showing active efforts under § 48.028(4)(d)2./§ 938.028(4)(d)2. have been made to prevent breakup of Indian child's/Juv's family and that those efforts have been unsuccessful

d. Statement as to whether out-of-home care placement recommended is in compliance with order of placement preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b)

e. If recommended placement is not in compliance with that order, specific information showing good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d) for departing from that order

§ 48.33(5)
§ 938.33(5)

D. If foster care recommended but name of foster parent not available at time report filed

1) Agency must provide Ct and parent or guardian with name and address of foster parent within 21 days after dispositional order is entered, except

2) Upon notice and after hearing, Ct may order information withheld if disclosure would result in imminent danger to child/Juv or foster parent

3. Dispositional Hearing Procedures

A. Hearing conducted by Judge not CCC

§ 757.69(1m)(a)

1) Except CCC may

a. Impose civil law or ordinance disposition

§ 757.69(1)(g)5.
§ 757.69(1m)(g)

b. Make dispositions in uncontested proceedings under §§ 48.13, 48.133, 938.12, or 938.13, except CCC may not place Juv in Type 2 RCCCY under § 938.34(4d) or in SJO program under § 938.34(4h) or place Juv in secured RCCCY under § 938.34(4m)

§ 48.30(9)
§ 938.30(9)

2) If CCC accepted admission to delinquency, JIPS, CHIPS, or UCHIPS petition, Ct must

§ 48.30(8)
§ 938.30(8)

a. Review admission at beginning of dispositional hearing by addressing child/Juv/EM and parties personally and determine voluntariness with understanding of

- Nature of acts alleged in petition or citation
- Potential dispositions

b. Establish whether promises or threats made to elicit plea or admission

c. Alert unrepresented parties to possibility that Atty may discover defenses or mitigating circumstances

d. Make inquiries to establish factual basis for plea

§ 48.355(2)(b)6.
§ 938.355(2)(b)6.

3) If out-of-home placement, Ct must make oral findings consistent with the written findings referred to in **Sec. 4.A.**3) *infra*

§ 48.335(3j)
§ 938.335(3j)

4) At hearings involving an Indian child/Juv if recommending removal of Indian child/Juv from parent or Indian custodian and placement in a foster home, group home, or RCCCY, or in home of relative, agency must present as evidence specific information showing all of the following:

a. Continued custody of Indian child/Juv by parent or Indian custodian is likely to result in serious emotional or physical damage to Indian child/Juv under § 48.028(4)(d)1./§ 938.028(4)(d)1.

b. Active efforts under § 48.028(4)(d)2./ § 938.028(4)(d)2. have been made to prevent the breakup of Indian child's/Juv's family, and those efforts have proved unsuccessful

c. Placement recommended is in compliance with order of placement preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b) or, if that placement is not in compliance with that order, good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d), for departing from that order

d. See order of preference listing in **JV 17, Sec. 7.B.**3)c.

SCR 71.01

B. Hearing must be recorded

§ 48.299(4)(b)
§ 938.299(4)(b)

C. Common law and statutory rules of evidence not binding at dispositional hearing

1) Ct must

a. Admit all testimony having reasonable probative value

b. Exclude immaterial, irrelevant, or unduly repetitious testimony

c. Give effect to rules of privilege recognized by law

d. Apply basic principles of relevancy, materiality, and probative value to proof of all questions of fact

e. Note in record objections to evidentiary offers and offers of proof of evidence not admitted

2) Ct may admit hearsay evidence if demonstrable circumstantial guarantees of trustworthiness

§ 48.299(3)

D. Under Ch 48, child must be present unless

1) Ct finds it in best interest of child with counsel's and GAL's consent to exclude child temporarily from CHIPS hearing

2) Ct finds child under 7 years too young to comprehend hearing and in child's best interests to be excluded from entire hearing

3) No provision for exclusion of Juv under Ch 938

§ 48.299(1)
§ 938.299(1)

E. If public hearing not demanded, general public excluded from dispositional hearing

§ 48.299(1)(a)
§ 938.299(1)(a)

1) Public dispositional hearing may be demanded by child/Juv, EM, or UC, but hearing may not be public if parent, guardian, EM, or UC objects

2) Persons who may be present

a. Parties

b. Counsel/GAL

c. Child's Ct-Appointed Special Advocate (CASA)

§ 48.299(1)(ag)
§ 938.299(1)(ag)

d. Child's/Juv's foster parent or physical custodian, who may be excluded from portion of hearing dealing with sensitive personal information or if exclusion in child's/Juv's best interest

§ 938.299(1)(am)

e. Victim, victim's family member, and representative of victim's organization may attend any hearing for alleged act against victim, but may be excluded from portion of hearing dealing with sensitive personal information not directly related to alleged act

f. Witnesses

g. Anyone requested by party and approved by Ct

h. Any other person Ct finds to have proper interest in case or work of Ct, including Attys and persons engaged in bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

- Representative of news media who wishes to report news without revealing identity of Juv involved must be permitted to attend

§ 48.299(1)(b)
Ch 785
§ 938.299(1)(b)

3) Except as provided under § 48.375(7), § 48.396, and § 938.396, or when a public hearing is held, anyone who divulges information that would identify child/Juv/EM or family subject to contempt of Ct

§ 938.299(1)(b)

a. Does not preclude a victim from commencing a civil action

§ 48.299(3)

4) Child must be present unless

a. Ct finds it in best interest of child with counsel's and GAL's consent to temporarily exclude child from CHIPS hearing

b. Ct finds child under 7 years too young to comprehend hearing and in child's best interest to be excluded from entire hearing

§ 938.299(1)(ar)

F. In addition to provisions in Sec. E. above, the following may attend proceedings under Ch 938

1) General public may attend any hearing for Juv charged with violation

a. That would be a felony if committed by an adult, and Juv has prior adjudication of delinquency of record and unreversed

b. That is an SJO violation

- See **Appendix 1**, SJO Offenses, for list of violations

c. Judge shall exclude public if victim of sexual assault objects to public hearing and may also exclude public during portion of hearing dealing with sensitive personal matters of Juv and family

§ 48.299(6)
§ 938.299(6)

G. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

1) Proceedings may be stayed if specific findings made

§ 48.299(6)(d)
§ 938.299(6)(d)

a. Or Ct determines or has reason to know that paternity proceedings may result in finding that child/Juv is Indian child/Juv and in petition by child's/Juv's parent, Indian custodian, or tribe for transfer of proceeding to jurisdiction of tribe

§ 48.299(8)
§ 938.299(8)

2) Ct may order record of mother's testimony regarding paternity, which is admissible in Family Ct paternity action

Comment

3) It appears that putative father not entitled to participate as party until adjudicated father

§ 938.335(3m)

H. Victim's right to be heard in delinquency or JIPS disposition

1) Ct shall determine whether victim wants to make statement or submit written statement to be read to Ct

2) Ct shall allow victim to make statement or submit written statement to be read to Ct

3) Ct may allow any other person to make or submit statement

4) Statement must be relevant to disposition

5) Ct shall inquire of DA or Corp Counsel whether s/he has complied with § 938.27(4m), whether any known victim requested notice of date, time, and place of dispositional hearing and, if so, DA or Corp Counsel provided such notice

6) DA or Corp Counsel shall attempt to contact any known victims to inform them of right to make statement

a. Failure to comply not ground for appeal or for Ct to reverse or modify any dispositional order

§ 938.355(6), (6d), (6g), (6m)

I. Judge must explain conditions with which Juv required to comply and inform Juv of possible sanctions for violation

St v Eugene W
2002 WI App 54
251 Wis. 2d 259

1) If Juv competency an issue, Ct must make record that Juv understands conditions in order

- When Juv raises competency, DA has burden to establish by clear and convincing evidence that Juv has ability to understand conditions of order, including sanctions

§ 938.341

2) If act would be felony if committed by adult, Ct must inform Juv of penalties under § 941.29 (possession of firearm by felon)

§ 938.3415

3) If act would be violent felony under § 941.291(1)(b) if committed by adult, Ct must inform Juv of penalties under § 941.291 (possession of body armor)

J. For right to counsel, see JV 2, Sec. 2

K. Use of restraints (shackling)

§ 48.299(2m)
§ 938.299(2m)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m) or § 938.299(2m). *See infra* **Appendix 13**

§ 48.335(6)
§ 938.335(6)

L. If dispositional order places child/Juv outside home, parent, if present at hearing, shall be requested to provide names and other identifying information of 3 relatives of child/Juv or other individuals 18 years of age or older whose home parent requests Ct to consider as placements for child/Juv, unless information previously provided under § 48.21(3)(f)/§ 938.21(2)(e) or (3)(f)

§ 48.355(2)(cm)1.
§ 938.355(2)(cm)1.

M. Ct shall order Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) to conduct a diligent search to locate and provide notice of information specified in § 48.21(5)(e)2.a.–e./ § 938.21(5)(e)2.a.–e. to all relatives of child/Juv named under § 48.335(6)/§ 938.335(6) and adult relatives as defined under § 48.21(5)(e)1./§ 938.21(5)(e)1. within 30 days after removal unless child/Juv is returned home within that period

1) Ct may also order Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) to conduct a diligent search to locate and provide notice to other adult individuals (named under § 48.335(6)/§ 938.335(6)) within 30 days after removal unless child/Juv returned home sooner

2) No notice required if Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) has reason to believe it would be dangerous to child/Juv or parent if child/Juv were placed with that person or relative

4. CHIPS, UCHIPS, JIPS, and Delinquency Dispositional Orders

§ 48.355(2)(a)
§ 938.355(2)(a)
RMC Forms JC-1611,
JD-1746

A. In addition to order, Ct must

1) Make written findings of fact and conclusions of law

a. Based on evidence presented to support disposition ordered including findings as to child's/Juv's/EM's condition and need for special treatment or care if examination or assessment conducted under § 48.295 or § 938.295

§ 48.355(2)(a)
§ 938.355(2)(a)

- A finding may not include a finding that a child/Juv/EM is in need of psychotropic medications

MG v La Crosse Cty Human Servs Dept

(*In Int of GH*)
150 Wis. 2d 407 (1989)

b. Although written findings of fact are essential part of valid dispositional order, in uncontested case, when parties represented by counsel and appropriate statutory procedure followed, specific fact-finding of § 48.355(2)(a)/ § 938.355(2)(a) not required

§ 48.355(1)
§ 938.355(1)

2) Decide on placement and treatment based on evidence submitted

§ 48.355(2)(b)6.
§ 938.355(2)(b)6.

3) If out-of-home placement, include finding that

a. Continued placement of child/Juv in home would be contrary to welfare of child/Juv

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 938.355(2)(b)6.

b. If placement of Juv with relative, or in foster home, group home/second-chance home as described in § 48.625(1m), residential treatment center, or Type 2 RCCCY, include a finding that Juv's current residence will not safeguard welfare of Juv or community because of serious nature of act

c. Reasonable efforts made by primary agency to prevent need to remove child/Juv from home (unless reasonable efforts not required), or

d. If applicable, and if permanency plan previously prepared for child/Juv, reasonable efforts made by primary Dept or agency to achieve permanency goal of permanency plan, including, if appropriate, through out-of-state placement

§ 48.355(2d)
§ 938.355(2d)

e. Reasonable efforts not required if Ct finds any of following, as evidenced by final judgment of conviction. But see **Sec. 3.A.**3) above

- Parent has subjected child to aggravated circumstances defined in § 938.355(2d)(a)1. and § 48.355(2d)(a)1., as evidenced by final judgment of conviction

- Parent has committed, has aided or abetted commission of, or has solicited, conspired, or attempted to commit violation of § 940.01, § 940.02, § 940.03, or § 940.05, or violation of similar law of any other State or federal law if victim is child of parent, as evidenced by final judgment of conviction

- Parent has committed violation of § 940.19(3), 1999 Stats., § 940.19(2), (4), or (5), § 940.225(1) or (2), § 948.025, § 948.03(2)(a), (3)(a), or (5)(a)1., 2., or 3., or § 948.085, or violation of similar law of any other State or federal law, as evidenced by final judgment of conviction, and violation results in great bodily harm or substantial bodily harm to child/Juv or another child of parent

§ 48.355(2d)(b)3m.,
§ 938.355(2d)(b)3m.

- Parent has committed violation of § 948.051 (child trafficking) or violation of similar law of any other State or federal law, as evidenced by final judgment of conviction, and the victim of that violation is a child of the parent

- Parental rights to another child have been involuntarily terminated, as evidenced by final order of Ct of competent jurisdiction terminating those parental rights

- In Ch 48 case, parent has been found under § 48.13(2m) to have relinquished custody of child under § 48.195(1m) when child was 72 hours old or younger, as evidenced by final order of Ct making that finding

§ 48.355(2)(b)6v.
§ 938.355(2)(b)6v.

f. If child/Juv is Indian child/Juv who is being removed from home of parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evidence, including testimony of one or more qualified expert witnesses, that continued custody of Indian child/Juv by parent or Indian custodian is likely to result in serious emotional or physical damage to child/Juv under § 48.028(4)(d)1./§ 938.028(4)(d)1. and a finding that active efforts under § 48.028(4)(d)2./§ 938.028(4)(d)2. have been made to prevent breakup of Indian child's/Juv's family and those efforts have proved unsuccessful

- Findings shall be in addition to findings under § 48.355(2)(b)6./§ 938.355(2)(b)6.

- Findings not required if they were made in previous order in the proceeding unless a change in circumstances warrants new findings

§ 48.355(2d)(d)
§ 938.355(2d)(d)

g. Ct must include "active efforts" finding under § 48.028(4)(d)2./§ 938.028(4)(d)2. if child/Juv is an Indian child/Juv

§ 48.355(2)(b)6g.
§ 938.355(2)(b)6g.

h. If child/Juv placed outside home, order child/Juv into placement and care responsibility of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more) and assign that agency primary responsibility for providing services

§ 48.355(2)(b)6m.
§ 938.355(2)(b)6m.

i. Ct approves placement recommended by agency or if placement other than that recommended by agency, Ct has given bona fide consideration to recommendations by agency and all parties relating to placement

§ 48.295
§ 938.295

4) Include findings as to child's/Juv's/EM's condition and need for special treatment or care if physical, psychological, AOD dependency, mental, or developmental examination or assessment conducted

§ 48.355(2)(d)
§ 938.355(2)(d)

5) Provide copy of order to parent, guardian, legal custodian, or trustee; to child through counsel or GAL; and to child's CASA, and if child/Juv is Indian child/Juv who has been removed from home of parent or Indian custodian, to child's/Juv's Indian custodian and tribe. Provide copy of UCHIPS order to AEM, UC's GAL, and CEM through parent, guardian, legal custodian, or trustee, and if CEM is Indian child, to CEM's Indian custodian and tribe

§ 48.37(1)
§ 938.37(1)

6) Ct may assess costs, fees, and surcharges against child/Juv 14 or older

§ 48.355(2d)(bm)
§ 938.355(2d)(bm)

7) Ct must make finding on case-by-case basis on circumstances specific to child/Juv and shall document or reference specific information on which finding is based in order

§ 48.355(1)

B. Ch

48 standards for disposition

§ 48.01(1)(intro)

1) Best interest of (unborn) child shall always be of paramount consideration

2) Shall employ means necessary to maintain and protect (unborn) child's well-being that

   a. Are least restrictive of parent's or child's rights or rights of AEM

   b. Ensure care, treatment, or rehabilitation of (unborn) child and family and AEM consistent with protection of public

3) Shall preserve family unit whenever appropriate

   a. In cases of child abuse or neglect or UC abuse, must be consistent with (unborn) child's best interest in terms of physical safety and physical health

   b. Child's health and safety shall be paramount concern

4) Follow policy of transferring custody from parent or of placing EM outside home only when no less drastic alternative

   a. If no less drastic alternative available, Ct should consider transferring custody to relative whenever possible

C. Ch

938 standards for disposition

§ 938.355(1)

1) Shall employ means necessary to promote equally important objectives under § 938.01

   a. To protect citizens from Juv crime

   b. To hold each Juv offender directly accountable for his or her acts

   c. To provide an individualized assessment of each alleged and adjudicated delinquent Juv, in order to prevent further delinquent behavior through the development of competency of the Juv offender, so that he or she is more capable of living productively and responsibly in the community

d. To provide due process through which each Juv offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced

e. To divert Juv from Juv justice system through early intervention as warranted, when consistent with protection of the public

f. To respond to a Juv offender's needs for care and treatment, consistent with prevention of delinquency, each Juv's best interest and protection of public, by allowing Ct to use the most effective dispositional option

g. To ensure that victims and witnesses of acts committed by Juvs that result in proceedings under Ch 938 are consistent with the provisions of Ch 938 and the Wis Constitution, afforded the same rights as victims and witnesses of crimes committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout such proceedings

§ 938.355(1)

2) If Judge determines that any of conditions in § 938.34(4m)(b)1., 2., or 3., applies, that determination shall be prima facie evidence that a less restrictive alternative than placement in a Juv correctional facility or secured RCCCY is not appropriate

§ 938.33(1)
§ 938.331

3) Must consider information provided in Ct report regarding effect of delinquent act on victim

St v James P
(In Int of James P)
180 Wis. 2d 677
(CA 1993)

4) Ct has obligation to fashion program of care, protection, and rehabilitation of Juv regardless of nature of Juv's offense. Code does not explicitly or implicitly require disposition to be related to violation

St v Richard JD
(Int of Richard JD)
2006 WI App 242
297 Wis. 2d 20

5) Ct must use a rational and explainable process of reasoning to determine disposition

§ 48.355(2)(b)
§ 938.355(2)(b)

D. Contents of order—must be in writing

§ 48.355(2)(b)1.
§ 938.355(2)(b)1.

1) Specific services to be provided to child/Juv and family or AEM

2) If custody transferred, identity of legal custodian

§ 48.355(2)(b)1m.
§ 938.355(2)(b)1m.

3) Notice that parent, guardian or legal custodian, child/Juv/EM if 14 or older, or GAL for UC may request agency providing care or services or agency that has legal custody to disclose to, or make available for inspection by parent, guardian, legal custodian or child/Juv/EM, or GAL for UC, contents of any record kept or information received by agency as provided in §§ 48.78(2)(ag), and (aj), and 938.78(2)(ag)

§ 48.355(2)(b)2m.

4) If AEM placed outside her home, must include name of place or facility, including transitional placements, where AEM to be treated

§ 938.355(2)(b)2m., 6n.

5) If Juv is placed outside the home under § 938.34(4m), order shall include name of Cty Dept that will provide supervision and determine placement for Juv, and statement that Ct has given bona fide consideration to recommendations made by agency and all parties relating to Juv's placement

§ 48.355(2)(b)6d.
§ 938.355(2)(b)6d.

6) If child/Juv is placed in RCCCY, group home, or shelter facility certified as qualified residential program under § 48.675, Ct order must contain findings about

a. Whether needs of child/Juv can be met through placement in foster home

b. Whether placement of child/Juv in RCCCY, group home, or shelter care facility provides most effective and appropriate level of care for child/Juv in least restrictive environment

c. Whether placement is consistent with short-term and long-term goals for child/Juv, as specified in permanency plan

d. Whether Ct approves or disapproves of the placement

§ 48.355(2)(b)3.
§ 938.355(2)(b)3.

7) Date of Expiration of Order

§ 48.355(4)(c)

a. Order relating to UCHIPS made before UC is born shall terminate one year after date on which order is granted unless Judge specifies a shorter period of time or terminates order sooner

§ 48.355(4)(a)
§ 938.355(4)(a)

b. Order made before child/Juv attains 18 that places or continues placement of child/Juv **in home** shall terminate one year after date on which order is granted unless Judge (under Ch 48) or Ct (under Ch 938) specifies shorter period of time or Judge (under Ch 48) or Ct (under Ch 938) terminates order sooner

§ 48.368
§ 938.368

- EXCEPT if petition for TPR filed or appeal from TPR judgment filed during year dispositional order in effect, order remains in effect until all proceedings related to filing of petition or appeal are concluded

§ 48.355(4)(b)
§ 938.355(4)(am)

c. Order made before child/Juv attains 18 years of age that places or continues placement of child/Juv in foster home, group home, or RCCCY, in home of relative other than parent, or in supervised independent living arrangement shall terminate on the latest of the following dates, unless the Judge (under Ch 48)/Ct (under Ch 938) terminates the order sooner:

§ 48.355(4)(b)1.
§ 938.355(4)(am)1.

- Date when child/Juv attains 18 years of age

§ 48.355(4)(b)2.
§ 938.355(4)(am)2.

- Date that is one year after the date on which order is granted

§ 48.355(4)(b)3.
§ 938.355(4)(am)3.

- If child/Juv is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, date on which child/Juv is granted high school or high school equivalency diploma or date on which the child/Juv attains 19 years of age, whichever occurs first

§ 48.355(4)(b)4.
§ 938.355(4)(am)4.

- If child/Juv is full-time student at a secondary school or its vocational or technical equivalent **and** an IEP under § 115.787 is in effect for the child/Juv, **and** child/Juv is 17 years of age or older when the order is granted, **and** the child/Juv or the child's/Juv's guardian on behalf of the child/Juv agrees to the order, the date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 21 years of age, whichever occurs first

— Under such an extended order, at any time after the child/Juv attains 18 years of age, the child/Juv, or the child's/Juv's guardian on behalf of the child/Juv may request the Ct in writing to terminate the order and, on receipt of such request the Ct, without hearing, shall terminate the order

§ 48.368
§ 938.368

- EXCEPT if TPR petition/appeal filed during year dispositional order in effect. *See* para. 7)b., *supra*

§ 938.355(4)(b)

d. If disposition to Type 2 RCCCY or Juv correctional facility or secured RCCCY, made before Juv attains 18, order may apply for up to 2 years after date on which order is granted or until Juv's 18th birthday, whichever is earlier, unless Ct specifies shorter period or terminates order sooner

- If order does not specify termination date, it shall apply for one year after date granted or until Juv's 18th birthday, whichever is earlier, unless Ct terminates earlier

e. If SJO placement (§ 938.34(4h)) made before Juv attains 18, order shall apply for 5 years after date on which order is granted if adjudication for violation of § 943.10(2) or Class B or C felony or until Juv reaches age 25 if adjudication for Class A felony

St v Jeremiah C
(In Int of Jeremiah C)
2003 WI App 40
260 Wis. 2d 359

f. JIPS dispositional order based solely on habitual truancy petition cannot continue beyond school term during which Juv attains 18

§ 48.355(2)(b)4.
§ 938.355(2)(b)4.
RMC Form JD-1718

8) Designation of amount of support, if any, to be paid by parent, guardian, or trustee, specifying that the support obligation begins on date of placement, or a referral to Cty child support agency under § 59.53(5) for establishment of child support

§ 48.275(1)
§ 938.275(1)(b)

9) Parent's contribution to cost of post-adjudication services

a. Ct shall order parents of child/Juv to contribute toward expense of post-adjudication services proportion of total amount Ct finds parents able to pay

- If Ct finds UC of AEM in need of protection and services, Ct shall order AEM to contribute

§ 938.275(1)(c)

b. Including any placement in Juv detention facility or Juv portion of Cty jail or place of nonsecure custody

§ 48.275(2), § 938.275(2)

10) Parent's contribution to cost of counsel/GAL

a. If State or Cty provides counsel to child/Juv/EM, Ct shall order parent or AEM to reimburse State or Cty

b. Ct shall order parents or AEM to reimburse State or Cty subject to indigency determinations

- If State provides legal counsel, parent or AEM may request SPD to determine whether parent/AEM indigent and to determine amount of reimbursement

- If not indigent, amount of reimbursement shall be maximum amount established by SPD Bd. If indigent in part, amount of reimbursement shall be amount of partial payment determined by SPD Bd

- If Cty provides legal counsel, Ct shall make a determination of indigency or appoint Cty Dept to make determination. If parent or AEM not indigent or indigent in part, Ct shall order amount of reimbursement

§ 48.235(8)(b)
§ 938.235(8)(b)

- Ct may order either or both parents to pay all or part of compensation of GAL

§ 48.275(2)(cg)
§ 938.275(2)(cg)

c. Ct shall, upon motion of parent or AEM, hold hearing to review indigency determination, amount of reimbursement ordered, and/or Ct's finding that interests of parent and child/Juv are not substantially and directly adverse and ordering reimbursement would not be unfair

§ 48.275(2)(a)
§ 938.275(2)(a)

d. Ct may not order reimbursement if parent is complaining or petitioning party or if Ct finds that interests of parent and child/Juv in proceeding are substantially or directly adverse and reimbursement would be unfair

e. Ct may not order reimbursement until State or Cty is no longer providing child/Juv/EM with legal counsel in the proceeding

§ 48.275(2)(e)
§ 938.275(2)(e)

f. Parent/AEM who fails to comply with order for reimbursement subject to contempt under Ch 785

§ 48.275(3)

g. Reimbursement does not apply to parent of person subject to hearing under a proceeding under § 48.375(7)

§ 48.355(2)(b)7.
§ 938.355(2)(b)7.

11) Statement of conditions with which child/Juv/EM required to comply

Sheboygan Cty DHHS
v Tanya MB
(In re TPR to Elijah WL)
2010 WI 55
325 Wis. 2d 524
FT v St (In Int of FT)
150 Wis. 2d 216
(CA 1989)

a. Ct must explain conditions

b. Ct cannot impose sanctions on delinquent/JIPS for violating dispositional order if order does not contain statement listing conditions [or if before violation Juv has acknowledged in writing that Juv has read or has had read to him/her conditions and possible sanctions and that he/she understands conditions and possible sanctions]

§ 48.355(2)(c)
§ 938.355(2)(c)

12) If school attendance condition of order, order shall specify what constitutes violation and shall direct school board of school district or governing body of private school in which child/Juv enrolled, or it shall request governing body of the tribal school in which child/Juv is enrolled, to notify Cty Dept responsible for supervising child/Juv (or DCF in Cty with population of 750,000 or more) within 5 days after any violations

§ 48.355(5)
§ 938.355(5)

E. Party, person, or agency providing disposition services is bound by Ct order

§ 48.355(7)
§ 938.355(7)

F. Ct may enter order applicable to parent, guardian, legal custodian, family member of AEM, or other adult as provided under § 48.45 and § 938.45. (See JV 1, Children's Code, Sec. 6)

St ex rel Harris v Larson
64 Wis. 2d 521 (1974)

G. If placement from Juv detention facility not immediately available, continued detention cannot exceed 5 days without Ct review

§ 48.355(3)(a)
§ 938.355(3)(a)

H. After hearing with due notice to parent or guardian, Ct may set reasonable rules of parental visitation if in best interest of child/Juv

§ 48.355(3)(b)
§ 938.355(3)(b)

1) Except as provided in para. 3) below, Ct may not order visitation to parent if parent has been convicted of 1st- or 2nd-degree intentional homicide of child/Juv's other parent and conviction has not been reversed, set aside, or vacated

2) Except as provided in para. 3) below, Ct shall issue order prohibiting parent granted visitation under § 48.355(3)(a)/ § 938.355(3)(a) from having visitation with child/Juv if parent convicted of 1st- or 2nd degree intentional homicide of child/Juv's other parent and the conviction has not been reversed, set aside, or vacated

a. On petition of child/Juv, guardian, legal custodian, person or agency bound by order, or DA or Corp counsel of Cty in which order entered on Ct's own motion and on notice to parent

3) Paras. 1) and 2) do not apply if Ct determines by clear and convincing evidence that visitation would be in best interest of child/Juv

a. Ct shall consider wishes of child/Juv in making determination

5. CHIPS/UCHIPS Dispositions

§ 48.345(1)

A. Judge may counsel child, parent, guardian, or legal custodian

§ 48.345(2)

B. Judge may place child under supervision of DCF (if it approves), an agency, or suitable adult (including friend of child)

1) Judge must prescribe reasonable rules of conduct for child, parent, guardian, or legal custodian

2) Rules designed for physical, mental, and moral well-being and behavior of child, and physical well-being of UC

In re GGD v St
97 Wis. 2d 1 (1980)

3) Child must be given notice of conditions

§ 48.345(2m)
§ 48.38(1)(a)

C. Judge may place child at home under supervision of DCF, Cty Dept, or child welfare agency and order agency or Dept to provide specific services to child and family including

1) Individual, family, or group counseling

2) Homemaker services

3) Parent aide services

4) Respite care

5) Housing assistance

6) Child care

7) Parent skills training

8) Prenatal development training or education

§ 48.345(2r)

D. Place child under Sec. 5.B. or 5.C. above and request CASA program to designate CASA for child

1) To perform activities specified in § 48.236(3) authorized under § 48.07(5)(a)

2) Advocate shall have authority specified in § 48.236(4) authorized in memorandum of understanding under § 48.07(5)(a)

§ 48.345(3)

E. Designate one of following as placement

§ 48.345(3m)

1) Subject to § 48.028(7)(c), if child is Indian child who is being removed from home of parent or Indian custodian and placed outside that home, designate one of placements in § 48.028(7)(b)1.–4. in order of preference listed, unless Ct finds good cause as described in § 48.028(7)(e)

2) Home of parent or other relative of child

a. Except judge may not designate home of parent or other relative if parent or other relative convicted of 1st- or 2nd-degree intentional homicide of other parent of child and conviction has not been reversed, set aside, or vacated, UNLESS

- Judge determines by clear and convincing evidence that placement would be in best interests of child
- Judge shall consider wishes of child in making determination

3) Home of person who is not required to be licensed if placement for less than 30 days

a. Except judge may not designate home of parent or other relative if parent or other relative convicted of 1st- or 2nd-degree intentional homicide of other parent of child and conviction has not been reversed, set aside, or vacated UNLESS

- Judge determines by clear and convincing evidence that placement would be in best interests of child
- Judge shall consider wishes of child in making determination

4) Foster home licensed under § 48.62, group home licensed under § 48.625, or similar out-of-state facility, or home of guardian under § 48.977(2)

§ 48.625(1m)

5) Group home or similar out-of-state facility if child at least 12, is custodial parent or EM, is receiving inadequate care, and is in need of safe and structured living arrangement

6) RCCCY licensed under § 48.60 or similar out-of-state facility

7) With a parent in a QRFTF or similar out-of-state facility, if child's permanency plan includes a recommendation under § 48.38(4)(em) before the placement is made

§ 48.345

8) May not place any CEM outside home unless Ct finds CEM is refusing or has refused to accept AODA services offered to her or is not making or has not made good-faith effort to participate in any AODA services offered

§ 48.345(3)

9) Ct may not order any out-of-home placement with persons who have certain criminal histories

§ 48.345(4)

F. Judge may transfer legal custody if shown that rehabilitation or treatment and care cannot be accomplished by voluntary consent of parent or guardian

§ 48.355(1)

1) Statutory policy to transfer custody only when no less drastic alternative

Comment

2) Transfer of custody not necessary for State or federal funding

§ 48.345(4)

3) Custody may be transferred to

a. Relative of child

b. Cty Dept or DCF in Cty with population of 750,000 or more

c. Licensed child welfare agency

§ 48.345(6)

G. Judge may order parent, guardian, or legal custodian to provide special treatment and care (See JV 1, Children's Code, Sec. 2, for definition of special treatment and care)

1) Upon failure or financial inability to provide it, Judge may order proper agency to provide care

72 OAG 30

a. Ct may order § 51.42 or § 51.437 Dept to provide care or treatment if CHIPS finding

§ 48.345(6)(a)

b. Does not require transfer of legal custody

Comment

2) Includes outpatient treatment or care only

§ 48.355(2)(a)

3) May NOT include order for administration of psychotropic drugs

§ 48.345(6)(b)

4) Special rules exist for payment for special treatment and care relating to AODA services

§ 48.361

a. If parent neglects, refuses, or is unable to provide or refuses to provide Ct-ordered AODA services for child through own health insurance or other party

- Judge may order parents to pay

§ 48.547

- If payment not attainable and Cty has AODA pilot program, Ct may order Cty Dept of human services or § 51.42 or § 51.437 Dept in child's Cty of legal residence to pay regardless of whether custody taken from parent

§ 48.361(2)(a)1.

b. If parent consents to provide Ct-ordered AODA services for child through own insurance or other 3rd-party insurance, but health insurance provider or other 3rd-party payer refuses to provide the services

- Ct may order provider or payer to pay in accordance with terms of insurance policy or payment plan

§ 48.345(6m)
§ 46.56

H. If Ct report recommends coordinated services plan of care and Cty (or tribe) has initiative for coordinated services under § 46.56, Judge may order assessment of child's/family's eligibility and of initiative's appropriateness and, if child and family are eligible, Judge may order that plan be developed and implemented

§ 46.56(1)(cm)

1) Coordinated services plan of care is a plan under § 46.56(8)(h) for child who is involved in 2 or more systems of care and his/her family

§ 46.56(1)(or)

a. "System of care" is a public or private organization that provides specialized services for children with mental, physical, sensory, behavioral, emotional, or developmental disabilities or that provides child welfare, juvenile justice, educational, economic support, AODA, or health-care services for children

§ 48.345(10)

I. Ct may order supervised independent living

1) Child must be at least 17 years old

2) Child may live alone or with friends

3) Judge must determine appropriate supervision

§ 48.345(4)(a)–(c)

4) May transfer legal custody if plan cannot be accomplished with parent's consent

5) Necessary showing that child of sufficient maturity and judgment

6) Necessary proof of reasonable plan for supervision

§ 48.345(12)

J. Ct may order child to attend educational program

1) Educational program may be any of the following

a. Nonresidential educational program including program for children at risk provided by school district in which child resides

b. Nonresidential educational program provided by licensed child welfare agency

- If pursuant to contractual agreement with school district in which child resides

c. Educational program provided by private nonprofit nonsectarian agency located in school district in which child resides

- If pursuant to contractual agreement with school district in which child resides

d. Educational program provided by technical college district located in school district in which child resides

- If pursuant to contractual agreement with school district in which child resides

e. Educational program provided by tribal school

- If pursuant to contractual agreement with school district in which child resides

2) Judge must order school board to disclose child's pupil records to Cty Dept or primary agency to determine compliance

3) Judge must order Cty Dept (or DCF in Cty with population of 750,000 or more) or primary agency to disclose to educational program provider records or information about child as necessary to assure provision of appropriate educational services

§ 48.345(13)

K. CHIPS with AOD treatment or education

§ 48.345(13)(a)

1) If Ct report recommends AOD treatment, Judge may order child to enter outpatient AODA treatment program at approved treatment facility

a. Facility shall report to primary agency

- If child cooperating with treatment

- If treatment effective

§ 48.345(13)(b)

2) If Ct report recommends AOD education, Judge may order child to participate in AODA educational program approved by Ct

a. Program provider shall report to primary agency about child's attendance

§ 48.345(14)(a)

L. Inpatient treatment for CEM

1) If, based on evaluation under § 48.295 and Ct report, Judge finds CEM in need of inpatient treatment for habitual lack of self-control in use of alcohol or controlled substances or controlled substance analogs exhibited to a severe degree, that inpatient treatment is appropriate and least restrictive treatment consistent with CEM's needs, Judge may order CEM to enter inpatient treatment

a. Facility shall report to primary agency

- If CEM cooperating with treatment

- If treatment appears to be effective

b. Payment shall be in accordance with § 48.361

§ 48.345(15)

M. For CEM, if it appears unborn CHIPS may be born during period of dispositional order, Judge may order child, when born, to be provided with any services or care that may be ordered for CHIPS

§ 48.345

N. Ct may NOT do the following in CHIPS cases

Chs 46, 54, 49, 51, 115

1) Place child in treatment facility for developmental disabilities, mental illness, or exceptional educational needs, unless provisions of appropriate Chs complied with

2) May not place any CEM outside her home unless Ct finds CEM refusing or has refused to accept any AODA services offered or is not making or has not made good-faith effort to participate on any AODA services offered

6. Additional Requirements If Out-of-Home CHIPS/UCHIPS Disposition

A. Written Ct order must include

§ 48.355(2)(b)1.

1) Specific services to be provided to child and family, to CEM and family, or AEM

Sheboygan Cty DHHS
v Tanya MB
(In re TPR to Elijah WL)
2010 WI 55
325 Wis. 2d 524

a. While specific services may be implicit from Ct-ordered conditions for return, better practice is to state specific services in dispositional order

2) If custody transferred, identity of legal custodian

3) Finding that continued placement in home would be contrary to welfare of child

a. "Contrary to welfare" finding must be made and documented in first Ct order sanctioning removal from parental home to be ASFA-compliant (See **JV 9, ASFA, Sec. 2**)

§ 48.355(2)(b)6.

4) Reasonable efforts finding, including whether primary agency made

a. Reasonable efforts to prevent need to remove child from home, or

b. If applicable and if permanency plan previously prepared for child, reasonable efforts to achieve permanency goal of permanency plan, including, if applicable, through out-of-state placement

§ 48.355(2c)

c. While assuring child's health and safety are paramount concerns, Ct's consideration includes,

- Comprehensive assessment of family's situation completed, including determination of likelihood of protecting child's health, safety, and welfare in the home
- Financial assistance, if applicable, was provided to family
- Services offered or provided to the family and whether any assistance provided to family, including
  - In-home support services
  - In-home intensive treatment services
  - Community support services
  - Specialized services
- Monitoring of client progress and participation

- Alternative ways of addressing the family's needs provided

§ 48.355(2c)(b)

d. If Ct finds primary agency has made reasonable efforts to achieve permanency goal of permanency plan, considerations shall include those in para. c. above and whether visitation schedules between child and parents implemented, unless visitation denied or limited by Ct

§ 48.355(2d)

e. Reasonable efforts not required if Ct finds any factors set forth in **Sec. 4.A.**3)e., *supra*

§ 48.355(2)(b)6.

f. Findings must be on case-by-case basis, based on circumstances specific to child and shall document or reference specific information on which findings based in order

- Order without specific information or amended order that retroactively corrects earlier order do not comply

§ 48.355(2)(b)6g.

5) Order child into placement and care responsibility of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more) and assign that agency primary responsibility for providing services

§ 48.355(2)(b)6m.

6) If Ct approves placement recommended by agency or if placement other than that recommended by agency, Ct has given bona fide consideration to recommendations by agency and all parties relating to placement

Committee Comment

a. If Ct orders placement different than agency recommendation, Ct may want to consider relevant testimony

§ 48.355(2)(b)2.

7) Name of place or facility where child placed, except when name of particular foster home not available

a. Agency must provide Ct and parent or guardian with name and address of foster parent within 21 days after dispositional order is entered, except

b. Upon notice and after hearing, Judge may order information withheld if disclosure would result in imminent danger to child or foster parent

§ 48.355(2m)

c. May include name of transitional placement

- May not designate specific time for transition

- May place specific time limitations pending availability of ordered placement

§ 48.355(2)(b)2m.

8) If AEM placed outside home, name of place or facility, including transitional placements, where AEM shall be treated

§ 48.355(2)(b)6d.

9) If child is placed in RCCCY, group home, or shelter facility certified under § 48.675 as qualified residential treatment program

a. Whether needs of child can be met through placement in a foster home

b. Whether placement of child in RCCCY, group home, or shelter care facility provides most effective and appropriate level of care for child in least restrictive environment

c. Whether placement is consistent with short-term and long-term goals for child, as specified in permanency plan

d. Whether Ct approves or disapproves of the placement

§ 48.355(2)(b)5., (2e)
§ 48.38, § 48.33

10) Permanency plan. See **JV 9** for permanency planning

§ 48.356
RMC Form JD-1753

11) TPR warning and grounds for TPR

a. See **JV 13** for full discussion of grounds

Recommendation

b. Attach copy of involuntary TPR statute to Ct's order emphasizing abandonment, continuing need, and any other potentially applicable grounds

Recommendation

c. If ground for subsequent TPR is continuing need for protection and services, then dispositional order and each modification and extension should contain the TPR warning

St Croix Cty v Michael D
(In re TPR to Matthew D)
2016 WI 35
368 Wis. 2d 170

- While better practice is to include written notice, only one order placing child outside home must contain written notice

Cynthia E v La Crosse
Cty Human Servs Dept
(In Int of Jamie L)
172 Wis. 2d 218 (1992)

d. Written notices containing more than specific ground comply with statute

§ 48.356

12) Ct must inform parent(s) or EM of conditions necessary for return of child or for parent to be granted visitation

a. May include changes required in

- Parent's conduct
- Child's conduct
- Nature of home

RH v Dane Cty DSS
(In Int of RH)
157 Wis. 2d 161
(CA 1990)

b. Condition for child's return need not be one that would provide separate basis for Ct's jurisdiction

Kenosha Cty Dept of
Human Servs v Jodie W
(In re TPR to Max GW)
2006 WI 93
293 Wis. 2d 530

c. Conditions of return must be tailored to particular needs of parent and child

- Ct cannot impose condition of return that is impossible for parent to meet

§ 48.355(2)(b)4.
RMC Form JD-1718

13) Designation of amount of support, if any, to be paid by parent, guardian, or trustee, specifying that support obligation begins on date of placement, or referral to Cty child support agency under § 59.53(5) for establishment of child support

§ 48.355(2)(b)3.

14) Date of expiration of order

§ 48.355(4)(b)

a. Order made before child attains 18 years of age that places or continues placement of child in foster home, group home, or RCCCY, in home of relative other than parent, or in a supervised independent living arrangement, shall terminate on the latest of the following dates, unless the Judge terminates the order sooner:

§ 48.355(4)(b)1.

- Date when child attains 18 years of age

§ 48.355(4)(b)2.

- Date that is one year after the date on which the order is granted

§ 48.355(4)(b)3.

- If child is full-time student at a secondary school or high school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, date on which child is granted high school or high school equivalency diploma or date on which child attains 19 years of age, whichever occurs first

§ 48.355(4)(b)4.

- If child is a full-time student at a secondary school or its vocational or technical equivalent, **and** an IEP under § 115.787 is in effect for the child, **and** child is 17 years of age or older when the order is granted, **and** the child or the child's guardian on behalf of the child agrees to the order, the date on which child is granted high school or high school equivalency diploma or date on which child attains 21 years of age, whichever occurs first

§ 48.355(4)(b)4.

— Under such an extended order, at any time after the child attains 18 years of age, the child, or the child's guardian on behalf of the child, may request the Ct in writing to terminate the order and, on receipt of such request, the Ct, without hearing, shall terminate the order

§ 48.368

b. EXCEPT if petition for TPR filed or appeal from TPR judgment filed during year dispositional order in effect, order remains in effect until all proceedings related to filing of petition or appeal are concluded

St v Daniel T
(In Int of Daniel T)
2003 WI App 200
266 Wis. 2d 1032
rev'd (WI 8/2/04)
St v Kendell G
(In Int of Kendell G)
2001 WI App 95
243 Wis. 2d 67

NOTE: If a dispositional order is stayed, the stayed portion commences when the stay is lifted.

§ 48.355(4)(c)

c. Order made before UC is born effective up to one year after date on which order is granted, unless Judge specifies shorter period or terminates order sooner

§ 938.34
RMC Form JD-1745

7. Delinquency Dispositions

A. Judge must enter order deciding one or more dispositions in § 938.34 under a care and treatment plan

§ 938.34(16)

1) Stay of order. After entering disposition, Ct may enter additional order staying execution of dispositional order contingent on Juv's satisfactory compliance with any conditions specified in order and explained to Juv

a. If Juv violates any condition, agency supervising Juv or DA or Corp Counsel shall notify Ct and Ct shall hold hearing within 30 days to determine whether original disposition to be imposed

b. Juv subject to stay of order may waive any objections to imposing original dispositional order if Ct approves waiver

c. If hearing held, Ct to notify parent, Juv, guardian and legal custodian, all parties bound by original dispositional order, and DA or Corp Counsel, at least 3 days before hearing

d. All parties may consent to immediate hearing

e. Ct may not impose original dispositional order unless Ct finds by preponderance of evidence that Juv has violated condition of dispositional order

St v Kendell G
(In Int of Kendell G)
2001 WI App 95
243 Wis. 2d 67

f. If dispositional order (or portion of dispositional order) stayed, stayed portion commences when stay lifted

§ 938.34(16)
St v Cesar G
(In Int of Cesar G)
2004 WI 61
272 Wis. 2d 22

g. Ct may stay sex offender registration under § 301.45

- Ct should consider seriousness of offense, as well as factors in §§ 938.34(15m)(c) and 301.45(1m)(e)

- If Juv moves for stay, Juv has burden of proving, by clear and convincing evidence, that stay should be granted, based on statutory factors

B. Ct shall consider seriousness of act for which Juv is adjudicated delinquent

C. Ct may consider any other delinquent act read into record and dismissed at time of adjudication

§ 938.34(1)

D. Counsel Juv, parent, guardian, or legal custodian

§ 938.34(2)(a)

E. Place Juv under supervision of DOC (if DOC approves), an agency, Cty Dept, or suitable adult (including friend of Juv)

1) Ct must prescribe reasonable rules of conduct for Juv, parent, guardian, or legal custodian

a. Rules designed for physical, mental, or moral well-being and behavior of Juv

§ 938.34(2)(b)

F. Place Juv at home under supervision of DOC or Cty agency and order agency to provide specific services to Juv and family including

1) Individual, family, or group counseling

2) Homemaker services

3) Parent aide services

4) Respite care

5) Housing assistance

6) Child care

7) Parent skills training

§ 938.34(2)(c)

G. Ct may order Juv to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in order

§ 938.34(2g)

H. Volunteers in Probation (VIP) Program

1) If Juv found delinquent for act that would be misdemeanor if committed by adult, Juv may be placed in VIP program under reasonable and appropriate conditions

2) Chief Judge of district to approve VIP program

3) Ct determines that volunteer supervision will likely benefit Juv and community

4) Conditions may include directive to volunteer to be a role model to Juv, informal counseling, general monitoring, monitoring of conditions established by Ct, or any combination of these options

§ 938.34(2m)

I. Teen Court Program

1) Order Juv placed in Teen Court Program if all of following conditions apply

   a. Chief Judge of district has approved program

   b. Ct determines that program will likely benefit Juv and community

   c. Juv alleged to have committed a delinquent act that would be misdemeanor if committed by adult

   d. Juv admits or pleads no contest in open Ct, with Juv's parent, guardian, or legal custodian present

   e. Juv has not successfully participated in a Teen Court Program during 2 years before date of alleged delinquent act

§ 938.34(2r)

J. Intensive supervision program

1) Order Juv to participate in a Cty-provided intensive supervision program under § 938.534

2) Cty Dept shall purchase or provide intensive surveillance, including electronic monitoring and Cty-based treatment services

3) Caseworker may have caseload of not more than 10 Juvs and shall have not less than one face-to-face contact per day

§ 938.534(1)(b)1.

4) If Juv violates condition of participation, caseworker or person authorized to provide intake or dispositional services may, without a hearing, take Juv into custody and place Juv in Juv detention facility or Juv portion of approved Cty jail for not more than 72 hours while alleged violation and appropriateness of sanction or change in conditions of Juv's participation in program are being investigated

§ 938.534(1)(b)2.

5) If Juv violates condition of participation, caseworker or person authorized to provide intake or dispositional services may, without a hearing, take Juv in custody and place Juv in Juv detention or Juv portion of approved Cty jail for not more than 72 hours as a consequence of violation, if

a. Conditions and possibility of sanction explained to Juv at dispositional hearing or

b. Before violation, Juv acknowledged in writing, that s/he read or had read conditions and possible placement and that s/he understood

c. Person who takes Juv in custody shall permit Juv to make written or oral statement concerning possible placement and cause of conduct for which Juv taken into custody

d. Person designated by Ct or Cty Dept who is employed in supervisory position shall review statement and shall approve placement, modify terms of placement, or order Juv released

§ 938.534(1)(b)3.

6) Juv may be taken into and held in custody under both paras. 4) and 5) above in connection with same course of conduct

a. Except Juv may not be held more than a total of 72 hours unless s/he receives hearing

§ 938.534(1)(b)4.

7) Use of placement in Juv detention facility or Juv portion of approved Cty jail subject to Cty Bd resolution

§ 938.534(1)(d)

8) Juv held under para. 4) or 5) above entitled to hearing under § 938.21 within 72 hours after end of day decision to hold Juv made

9) Written statement of reasons for continuing to hold Juv in custody may be filed rather than petition under § 938.25

§ 938.534(1)(c)

10) Caseworker may, without hearing, take Juv into custody and place in nonsecure custody for not more than 30 days as crisis intervention, if

a. Juv in need of crisis intervention and at disposition Ct informed Juv of that possible placement or

b. Before violation, Juv acknowledged in writing that s/he read or had read those conditions and that possible placement and that s/he understood

§ 938.34(3)

K. Place Juv in one of the following

1) Home of parent or other relative

a. Except judge may not designate home of parent or other relative if parent or other relative convicted of homicide of a parent of Juv under § 940.01 or § 940.05 and conviction has not been reversed, set aside, or vacated

- UNLESS Ct determines by clear and convincing evidence that placement would be in best interests of Juv
- Ct shall consider wishes of Juv in making determination

2) Home of person not required to be licensed if placement for less than 30 days

a. Except Ct may not designate home of parent or other relative if parent or other relative convicted of homicide of a parent of Juv under § 940.01 or § 940.05 and conviction has not been reversed, set aside, or vacated

- UNLESS Ct determines by clear and convincing evidence that placement would be in best interests of Juv
- Ct shall consider wishes of Juv in making determination

3) Foster home as defined in § 48.62

4) Group home as defined in § 48.625

§ 48.625(1m)

5) Second-chance group home if Juv is at least 12, is custodial parent or EM, is receiving inadequate care, and is in need of safe and structured living arrangement

6) Residential treatment center as defined in § 48.60

7) Independent living situation effective on or after Juv's 17th birthday, either alone or with friend, under such supervision as Ct considers appropriate, but only if Juv is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency

8) Juv detention facility or Juv portion of approved Cty jail, or in a place of nonsecure custody designated by Cty for a combination of single or consecutive days totaling not more than 365 days, including any placement under paras. 1)–7), *supra*

a. Juv shall be given credit against period of detention or nonsecure custody imposed for all time spent in secure detention in connection with the course of conduct for which detention or nonsecure custody was imposed

b. Juv may be released from Juv detention facility, Juv portion of jail or place of nonsecure custody during specified hours to attend school, to work, or to attend or participate in any activity that Ct considers beneficial to the Juv

c. Placement of Juv in Juv detention facility or Juv portion of Cty jail is subject to adoption of a resolution by Cty Bd under § 938.06(5) authorizing the Ct to use these placements as a disposition

d. If Juv placement exceeds 30 days, whether or not consecutive, Cty Dept shall offer Juv AODA treatment, counseling, and education under § 938.34(6r)

§ 938.34(3)

L. Ct may not order any out-of-home placement with persons who have certain criminal histories

§ 938.34(3g)

M. Monitoring by electronic monitoring system for Juv subject to an order under § 938.34(2), (2r), (3)(a)–(e), (4h), or (4n) who is placed in the community

§ 938.34(4)

N. Transfer legal custody if shown that rehabilitation or treatment and care cannot be accomplished by voluntary consent of parent or guardian

§ 938.34(4)

1) Custody may be transferred to

   a. Relative of Juv

   b. Cty Dept

   c. Licensed child welfare agency

§ 938.34(4d)
§ 938.539

O. Place Juv in Type 2 RCCCY under supervision of Cty Dept and subject to Type 2 status only if

1) Juv found to be delinquent for commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult

2) Juv found to be a danger to public and to be in need of restrictive custodial treatment, but that placement in SJO program under § 938.34(4h) or in secured RCCCY under § 938.34(4m) would not be appropriate. Any of following should be prima facie evidence that Juv is a danger to public and in need of restrictive custodial treatment

§ 938.34(4m)

   a. Juv has committed certain delinquent acts that would be a felony if committed by an adult. See **Appendix 2**, Correctional Placement Offenses for list

   b. Juv has possessed, used, or threatened to use a handgun as defined in § 175.35(1)(b), short-barreled rifle as defined in § 941.28(1)(b) or short-barreled shotgun as defined in § 941.28(1)(c), while committing a delinquent act that would be a felony under Ch 940 if committed by an adult

   c. Juv has possessed or gone armed with a short-barreled rifle or a short-barreled shotgun in violation of § 941.28 or has possessed or gone armed with a handgun in violation of § 948.60

§ 938.34(4h)
Appendix 1
SJO Offenses

P. Place Juv in SJO program under § 938.538 if Juv qualifies for SJO treatment

1) See **Appendix 1** for list of SJO offenses

2) Ct must find only other disposition that would be appropriate would be placement in Juv correctional facility under § 938.34(4m)

3) Ct shall designate DOC (regional community corrections supervisor), Cty Dept, or child welfare agency to prepare Ct report

§ 938.538(3)(a)

4) SJO program components

a. Placement

- In a Juv correctional facility or secured RCCCY (Class B and C felonies)
- In a Juv correctional facility or secured RCCCY until age 25 for Class A felony offense, unless released sooner, with mandatory minimum confinement of 1 year
- In alternate care, including group home, foster home, (secured) RCCCY

b. Supervision, including intensive supervision and community supervision

c. Electronic monitoring

d. AODA outpatient treatment and services

e. Mental health treatment and services

f. Community service

g. Restitution

h. Transitional education and employment services

i. Other programs prescribed by DOC

5) Movement between components

a. Juvs in Type 2 Juv correctional facility status may be placed or replaced in any component by administrative transfer

St v David LW
(In Int of David LW)

213 Wis. 2d 277
(CA 1997)

6) Sec. 938.34(4h) does not permit disposition on basis that Juv adjudicated delinquent of similar offenses from other jurisdictions

St v Terry T
(In re Terry T)
2002 WI App 81
251 Wis. 2d 462

7) SJO placement can only be considered as part of original disposition and not part of subsequent proceeding

§ 938.34(4m)
Appendix 2
Correctional Placement
Offenses

Q. Correctional Placement. Place Juv in secured RCCCY

1) Juv found to be delinquent for commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult

2) Juv found to be a danger to public and to be in need of restrictive custodial treatment, but that placement in SJO program under § 938.34(4h) is not appropriate. Any of the following shall be prima facie evidence that Juv is a danger to public and in need of restrictive custodial treatment

a. Juv has committed certain delinquent acts that would be a felony if committed by an adult. See **Appendix 2**, Correctional Placement Offenses, for list

b. Juv has possessed, used, or threatened to use a handgun as defined in § 175.35(1)(b), short-barreled rifle as defined in § 941.28(1)(b) or short-barreled shotgun as defined in § 941.28(1)(c), while committing a delinquent act that would be a felony under Ch 940 if committed by an adult

c. Juv has possessed or gone armed with a short-barreled rifle or a short-barreled shotgun in violation of § 941.28 or has possessed or gone armed with a handgun in violation of § 948.60

§ 938.34(4n)

R. Aftercare Supervision. If Juv received correctional placement under § 938.34(4m), designate one of the following to provide aftercare supervision for Juv following Juv's release from secured RCCCY or Type 1 Juv correctional facility

1) Cty Dept of Cty of the Ct that placed Juv in Juv correctional facility or secured RCCCY

2) Cty Dept of Juv's Cty of legal residence

§ 938.34(5)

S. Order reasonable restitution or repair

1) If delinquent act has resulted in property damage or physical injury (excluding pain and suffering) AND Ct considers well-being and needs of victim and considers order for restitution beneficial to well-being and behavior of Juv

RWS v St (In Int of RWS)
162 Wis. 2d 862 (1991)

a. Restitution may be ordered once threshold adjudication of delinquency made

b. Order of restitution may encompass restitution for related but read-in charge

St v BS (In Int of BS)
133 Wis. 2d 136
(CA 1986)

c. May not order restitution for victim's lost wages

IV v St (In Int of IV)
109 Wis. 2d 407
(CA 1982)

d. May order restitution for unrecovered stolen property

RWS v St (In Int of RWS)
162 Wis. 2d 862 (1991)

e. Ct may order restitution on a read-in offense when Juv admits the offense; restitution may be ordered paid directly to an insurance company

f. Any recovery shall be reduced by amount recovered under § 938.45(1r)(a)

2) Order must include finding that Juv alone is financially able to pay or physically able to perform services

3) Order may allow up to 12 months to pay or complete services

4) If Juv objects to amount of damages claimed, must hold hearing on damages before amount of restitution is ordered

5) Ct may not order Juv under 14 to make more than $250 in restitution under the order

§ 938.34(5)(am)

6) Order Juv who owes restitution who is receiving income while placed in Juv correctional facility, RCCCY, or other out-of-home placement to contribute a specified percentage of income toward restitution

§ 938.34(5)(b)

7) Juv under 14 participating in restitution project provided by Cty may, for purpose of making Ct-ordered restitution, be employed or perform any duties under circumstances in which Juv 14 or 15 is permitted to be employed or perform duties under Ch 103 or any rule or under Ch 103

§ 895.035(2m)(a)

8) If Juv or parent with custody fails to pay restitution ordered by Ct assigned under Chs 48 and 938 or a Municipal Ct or if it appears likely Juv or parent will not pay restitution

a. Victim, victim's insurer, representative of public interest under § 938.09 or agency may petition Ct assigned under Chs 48 and 938 to order amount of the restitution unpaid by Juv or custodial parent be entered as a judgment against Juv and custodial parent and in favor of victim or victim's insurer

b. Petition may be filed after expiration of dispositional order or sentence, but no later than one year after expiration or any extension

- Judgment does not bar victim or victim's insurer or both from commencing another action seeking compensation from Juv or parent or both if amount of restitution ordered is less than total damages claimed

§ 895.035(2m)(bm)

c. Before entering order, Ct shall give Juv and parent notice of intent to issue order and opportunity to be heard regarding order

- Juv and parent may present evidence as amount of restitution unpaid, but not as to amount originally ordered

- Juv and parent may present evidence as to reason for failure to pay and ability of Juv and parent to pay

- In considering ability of Juv or parent to pay, Ct may consider assets, as well as income, of Juv or parent and may consider future ability of Juv or parent to pay within 20 years under § 893.40

§ 895.035(4)

- Except for recovery under § 895.035(4a) by school board or governing body of private school or for recovery for retail theft under § 943.51, maximum recovery from any parent or parents may not exceed $5,000 resulting from any one act of Juv

NEM v Strigel
208 Wis. 2d 1 (1997)

- Factors distinguishing one act from multiple acts are whether a sufficient period of time separates the conduct, whether conduct occurred at different locations and whether there is a distinct difference in nature of the conduct

- Individual damage determination for each act not required in cases involving improper sexual contact, when damages are primarily psychological and emotional

§ 895.035(2m)(bm)2.

d. Ct may take judicial notice of any deferred prosecution agreement, consent decree, dispositional order or sentence, extension of a consent decree, dispositional order or sentence, or any other finding or order in records of Juv maintained in that Ct or the Municipal Ct

e. Juv and parent may retain counsel of own choosing but Juv or parent has no right to appointed counsel

§ 895.035(2m)(c)

f. In lieu of paying restitution, Juv or parent may be ordered to perform community service work for public agency or nonprofit charitable organization designated by Ct ONLY if agreed to by public agency or nonprofit charitable organization and by person to whom restitution is owed

- Number of hours of community service may not exceed number determined by dividing amount owed by minimum wage established for adults in nonagriculture, nontipped employment under § 104.035(1)

- Ct shall ensure Juv or parent is provided with written statement of terms and conditions of community service order and that community service order is monitored

§ 938.34(5g)

T. Order participation in supervised work program or other community service work

1) Order Juv to participate in supervised work program administered by the Cty Dept or community agency approved by Ct or other community service work administered by a public agency or nonprofit charitable organization approved by Ct

2) Amount of work must be reasonably related to severity of offense

3) Ct must set program standards within Cty Bd's budgetary limits

4) Program may provide Juv compensation reflecting reasonable market value of work or may be uncompensated community service work

5) Program shall be administered by Cty Dept or community agency approved by Ct

6) Program shall be combined with counseling by agency staff member or other qualified person, and

   a. Shall be appropriate to Juv's age and physical ability

   b. Shall be designed to promote Juv's rehabilitation

   c. May not conflict with regular school attendance

7) Juv under 14 may not be ordered to perform more than 40 hours of community service work, except as provided in § 938.34(13r) or (14t)

§ 938.34(5g)(c)

8) Juv under 14 participating in supervised work program or other community service work may be employed or perform any duties under circumstances in which Juv 14 or 15 is permitted to be employed or perform duties under Ch 103 or any rule or under Ch 103

§ 938.34(5m)

U. Community service work program

1) Order Juv to participate in youth corps program or another community service work program if sponsor of program approves Juv's participation in program

§ 938.34(5r)

V. Victim-offender mediation program

1) Order Juv to participate in victim-offender mediation program, if victim of Juv's delinquent act agrees

§ 938.34(6)

W. Order parent, guardian, or legal custodian to provide special treatment and care (See JV 1, Children's Code, Sec. 2, for definition of special treatment and care)

1) Upon failure or financial inability to provide it, Ct may order proper agency to provide the care

2) Does not require transfer of legal custody

3) May order inpatient treatment or care if Juv has AODA impairment and Juv is proper subject for treatment and in need of inpatient treatment

a. Commitment may not total more than 30 days

b. Use of commitment under § 51.42 or 51.437 is subject to adoption of resolution by Cty Bd under § 938.06(5) authorizing use of that disposition

§ 938.361

4) Special provisions for payment for AODA services apply. (See **Sec. 5.G.** above)

§ 938.34(6m)

X. Coordinated Services Plan of Care

1) If Ct report recommends coordinated services plan of care and Cty (or tribe) has initiative for coordinated services under § 46.56, Ct may order assessment of Juv's/family's eligibility and of initiative's appropriateness and, if Juv and family are eligible, Ct may order that plan be developed and implemented

§ 938.34(6r)

Y. Order Juv to receive AOD treatment or education

1) If Ct report recommends AOD treatment, order Juv to enter outpatient AODA treatment program at approved treatment facility

a. Facility shall report to primary agency

- If Juv cooperating with treatment
- If treatment effective

b. Facility report to primary agency based on

- Terms of service agreement between Cty and facility
- Written informed consent of Juv 12 or older

- Written informed consent of Juv's parent if Juv under 12

2) If Ct report recommends AOD education, order Juv to participate in AODA educational program approved by Ct

a. Educational program provider shall report to primary agency about Juv's attendance

b. Educational program provider report to primary agency based on

- Terms of service agreement between Cty and provider
- Written informed consent of Juv 12 or older
- Written informed consent of Juv's parent if Juv under 12

3) Payment for Ct-ordered treatment or education in counties that have AODA pilot program shall be as in **Sec. 5.G.** above

§ 938.34(6s)

Z. Drug testing

1) Order Juv to submit to drug testing under a drug testing program that DOC shall promulgate by rule if Ct report indicates Juv in need of treatment for use or abuse of controlled substances

§ 938.34(7d)

AA. Order Juv to attend educational program

Madison Metro Sch Dist v
Circuit Ct for Dane Cty
2011 WI 72, ¶ 5
336 Wis. 2d 95

1) Ct does not have statutory authority to order school district to provide alternative educational resources to Juv lawfully expelled from school

2) Educational program may be any of the following

a. Nonresidential educational program including program for children at risk provided by school district in which Juv resides

b. Nonresidential educational program provided by licensed child welfare agency

- If under contractual agreement with school district in which Juv resides

c. Educational program provided by private, nonprofit, nonsectarian agency located in school district in which Juv resides

- If under contractual agreement with school district in which Juv resides
- If complies with 42 USC 2000d

d. Educational program provided by VTAE district located in school district in which Juv resides

- If under contractual agreement with school district in which Juv resides

e. Educational program provided by tribal school

- If under contractual agreement with school district in which Juv resides

3) Ct must order school board to disclose Juv's records to Cty Dept or primary agency to determine compliance

4) Ct must order Cty Dept or primary agency to disclose to educational program provider records or information about Juv as necessary to assure provision of appropriate educational services

§ 938.34(7g)

BB. Experiential education

1) Order Juv to participate in a wilderness challenge program or other experiential education program

§ 938.34(7j)

CC. Youth Report Center

1) Order Juv to report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming of center

a. After school

b. In evening

c. On weekends

d. On other nonschool days, or

e. At any other time Juv not under immediate adult supervision

§ 938.34(7n)

DD. Juvenile offender education program

1) Order Juv to participate in educational program designed to deter future delinquent behavior by focusing on such issues as

   a. Decision-making

   b. Assertiveness instead of aggression

   c. Family and peer relationships

   d. Self-esteem

   e. Identification and expression of feelings

   f. AODA recognition

   g. Errors in thinking and judgment

§ 938.34(7r)

EE. Vocational training

1) Order Juv to participate in vocational assessment, counseling, and training, if Ct report recommends need

§ 938.34(7w)

FF. Day treatment program

1) Order Juv with specialized educational needs to participate in day treatment program, if recommended in Ct report

§ 938.34(8)

GG. Impose forfeiture allowing up to 12 months to pay

1) Ct must find

   a. Best interest of Juv and Juv's rehabilitation

   b. Juv alone is financially able to pay

2) Maximum amount of forfeiture

   a. Amount of fine that may be imposed on an adult committing that violation or

b. If violation applicable only to person under 18, $100

3) Upon failure to pay forfeiture, Judge may

a. Vacate forfeiture and order other alternatives

b. Suspend any license issued under Ch 29 (hunting, fishing, or trapping) for not less than 30 days nor more than 5 years

c. Suspend Juv's operating privileges defined in § 340.01(40) for not more than 2 years

§ 938.34(8)

d. Clerk of Ct must immediately take possession of license, if issued under Ch 29 or, if the license is issued under Ch 343, may take possession of, and, if possession is taken, must destroy the license

e. If forfeiture is paid during period of suspension, suspension shall be reduced to date of payment, and Ct must immediately notify DOT, which shall then return the license, if issued under Ch 29, to Juv

f. Any recovery shall be reduced by amount recovered under § 938.45(1r)(b)

§ 895.035(2m)(b)

4) If Juv or parent with custody fails to pay forfeiture ordered by Ct assigned under Chs 48 and 938 or a Municipal Ct or if it appears likely Juv or parent will not pay forfeiture, the representative of public interest under § 938.09, or the agency may

a. Petition Ct assigned under Chs 48 and 938 to order amount of the forfeiture unpaid by Juv be entered as a judgment against Juv and custodial parent and in favor of Cty or appropriate municipality

b. Petition may be filed after expiration of dispositional order or sentence, but no later than one year after expiration of dispositional order or sentence or any extension

§ 895.035(2m)(bm)

c. Before entering order, Ct shall give Juv and parent notice of intent to issue order and opportunity to be heard regarding order

- Juv and parent may present evidence as to amount of forfeiture unpaid, but not as to amount originally ordered
- Juv and parent may present evidence as to reason for failure to pay and ability of Juv and parent to pay
- In considering ability of Juv or parent to pay, Ct may consider assets, as well as income, of Juv or parent and may consider future ability of Juv or parent to pay within 20 years under § 893.40

d. Ct may take judicial notice of any deferred prosecution agreement, consent decree, dispositional order, or sentence, extension of a consent decree, dispositional order or sentence, or any other finding or order in records of Juv maintained in that Ct or the Municipal Ct

e. Juv and parent may retain counsel of own choosing but Juv or parent has no right to appointed counsel

§ 895.035(2m)(c)

f. In lieu of paying forfeiture, Juv or parent may be ordered to perform community service work for public agency or nonprofit charitable organization designated by Ct

- Number of hours of community service may not exceed number determined by dividing amount owed by minimum wage established for adults in nonagriculture, nontipped employment under § 104.035(1)

- Ct shall ensure Juv or parent is provided with written statement of terms and conditions of community service order and that community service order is monitored

§ 938.34(8d)

HH. Delinquency Victim and Witness Assistance Surcharge

1) In addition to any other disposition, Ct shall impose a delinquency victim and witness assistance surcharge of $20

2) If Juv placed in Juv correctional facility or secured RCCCY, DOC shall assess and collect amount owed from Juv's wages or other moneys

3) If Juv fails to pay surcharge, Ct may vacate surcharge and order other alternative; or Ct may

a. Suspend any license issued under Ch 29 for not less than 30 days nor more than 5 years, or

b. Suspend Juv's operating privileges defined in § 340.01(40) for not less than 30 days nor more than 5 years

c. If the surcharge is paid during period of suspension, suspension reduced to time period that has already elapsed

§ 895.035(2m)(b)

4) Judgment for nonpayment may be sought against Juv and custodial parent

- See **Sec. GG.4)** above

§ 938.34(11)

II. Transfer to foreign countries under treaty

1) If treaty allows transfer of adjudicated delinquent who is citizen or national of foreign country

2) If Juv and Juv's parent, guardian, and legal custodian agree, Ct may request that Governor commence transfer

§ 938.34(13r)

JJ. Violent violation in school zone

Appendix 3
Violent Crimes

1) If Juv adjudged delinquent for § 939.632(1)(e) violation (see **Appendix 3** for list of violent offenses)

   a. Require Juv to participate for 100 hours in supervised work program or perform 100 hours of other community service work

   b. Ct may not impose the requirement if Ct determines that Juv would pose a threat to public safety while completing work program or community service work

§ 938.34(13t)
§ 943.017

KK. Graffiti violation

1) Require Juv to participate for not less than 10 hours nor more than 100 hours in supervised work program or perform not less than 10 hours nor more than 100 hours of other community service work, except that if Juv has not attained 14 years of age the maximum number of hours is 40

§ 938.34(14d)

LL. Hate violation

1) If Juv found to have committed a violation under circumstances in which, if committed by an adult, adult would be subject to penalty enhancement under § 939.645, order any one or more of the following

   a. Restitution

   b. Supervised work program or other community service work

   c. Victim-offender mediation program or another means of apologizing to victim

   d. Juv offender education program that includes sensitivity training or training in diversity (See **Sec. DD.** above)

§ 938.34(14m)

MM. Violation involving motor vehicle

1) Ct may restrict or suspend operating privileges defined in § 340.01(40), if delinquent act involved motor vehicle

2) Ct may take possession of license; if it does so, it must destroy the license and forward to DOT notice stating the reason for and duration of suspension

3) Notice of limitation must be forwarded to DOT

§ 938.34(14p)
§ 943.70

NN. Restrict Juv's use of computers if Juv committed specific computer crime

§ 938.34(14q)

OO. Operating privilege suspended for certain firearm offenses and bomb scares

If Juv is found to have violated § 947.015 (bomb scare) and property involved is owned or leased by State or any political subdivision of State or if property is a school premises or if Juv found to have violated § 941.235 (carrying firearm in public building) or § 948.605 (possession of firearm in school zone), suspend operating privilege for two years

§ 938.34(14r)

PP. Controlled substance or controlled substance analog violation

1) Ct may suspend Juv's operating privilege defined under § 340.01(40) for not less than 6 months nor more than 5 years if Juv found to have violated Ch 961

2) If Ct suspends Juv's operating privilege under § 938.34(14r)(a), may take possession of any suspended license and destroy it. Ct must then forward to DOT notice of suspension stating that suspension is for violation of Ch 961

3) If Juv's license or operating privilege suspended or if Juv does not currently possess a valid operator's license issued under Ch 343, suspension is effective on the date on which the Juv is first eligible for issuance or reinstatement of operator's license

4) Not applicable to drug paraphernalia violations under § 961.573(2), 961.574(2), or 961.575(2) or a local ordinance strictly conforming to one of those statutes (See **JV 10**)

§ 938.34(14s)(a)
§ 961.41(3g)

QQ. Must order one of following penalties if Juv possessed or attempted to possess a controlled substance or controlled substance analog

1) First violation: Impose forfeiture not more than $50

2) Second violation within 12 months: Impose forfeiture not more than $100

3) Third or subsequent violation within 12 months: Impose forfeiture not more than $500

§ 938.34(14s)(am)
§ 961.41(1), (1m)
§ 961.65

RR. Must order one of following penalties if Juv manufactured, distributed, or delivered, or possessed with intent to manufacture, distribute, or deliver a controlled substance or controlled substance analog, or if Juv possessed materials for manufacturing methamphetamine

1) First violation: Impose forfeiture—minimum $250, maximum $500

2) Second violation within 12 months: Impose forfeiture—minimum $300

3) Third or subsequent violation within 12 months: Impose forfeiture of $500

4) If Juv's license or operating privilege suspended or Juv does not possess a valid license, the suspension is effective on date on which Juv is first eligible for issuance or reinstatement of license

§ 343.10
§ 938.34(14s)(am)

5) Juv not eligible for occupational license

§ 938.34(14s)(b)

SS. After ordering required disposition under Sec. QQ. or RR. above, Ct, with agreement of Juv, may enter order staying execution of dispositional order and enter additional order requiring Juv to do any of the following

1) Submit to AODA assessment by approved treatment facility

a. Order to specify assessment completion date

§ 938.34(14s)(c)

b. If facility notifies primary agency that Juv does not need treatment or education, Judge shall notify Juv whether original dispositional order will be reinstated

- Facility must obtain written informed consent of Juv to notify primary agency
- If Juv under 12, written informed consent of parent required

§ 938.34(14s)(b)

2) Participate in an outpatient AODA treatment program at approved treatment facility

a. May be ordered if assessment recommends treatment

3) Participate in AODA education program

§ 938.34(14s)(d)

4) If Juv completes treatment or education program, primary agency must be informed that Juv has complied with order, and Judge must notify Juv whether original dispositional order will be reinstated

a. Facility must obtain written informed consent of Juv to notify primary agency

b. If Juv under 12, written informed consent of parent required

§ 938.34(14s)(e)

5) If Juv does not participate in education program or has not satisfactorily completed treatment or educational program, Ct must impose original disposition

§ 938.34(14t)

TT. Possession of a controlled substance or controlled substance analog on or near certain premises

1) Must order Juv to participate for 100 hours in supervised work program or other community service work when Juv has committed violation of § 961.41(3g) by possessing or attempting to possess controlled substance or controlled substance analog listed in Schedule I or II under Ch 961

   a. While in or on the premises of a scattered site public housing project, as defined in § 961.01(20i)

   b. Within 1000 ft of park, jail, or correctional facility as defined in § 961.01(12m)

   c. In or on premises of a multi-unit public housing project as defined in § 961.01(14m)

   d. In or on premises of a public swimming pool, youth or community center as defined in § 961.01(22), or

   e. While in or within 1000 ft of private, tribal, or public school or school bus

§ 938.34(15)

UU. Deoxyribonucleic Acid (DNA) Analysis

§ 938.34(15)(a)

1) If Juv delinquent of violation that would be a felony if committed by an adult or of violation of § 940.225(3m), 941.20(1), 944.20, 944.30(1m), 944.31(1), 944.33, 946.52, or 948.10(1)(b), Ct shall require Juv to provide biological specimen for DNA analysis

   a. Ct shall inform Juv that Juv may request expungement under § 165.77(4)

VV. Sex offender reporting requirement

§ 938.34(15m)(am)

1) Except as in para. 3) below, if Juv is adjudicated delinquent on basis of violation or solicitation, conspiracy, or attempt to commit any violation under Chs 940, 944, or 948, § 942.08 or § 942.09, or §§ 943.01–.15, Ct may require Juv to comply with reporting requirements under § 301.45 if Ct determines underlying conduct was sexually motivated, as defined in § 980.01(5), and that it would be in interest of public protection to have Juv report

   NOTE: If Ct orders Juv to comply with reporting requirements under § 301.45 in connection with violation, or solicitation, conspiracy, or attempt to commit violation of § 942.09, Ct may provide that Juv be released from § 301.45 reporting requirements upon satisfying conditions of dispositional order imposed for the offense. If Juv satisfies conditions, Ct must notify DOC that Juv has satisfied conditions of order.

§ 938.34(15m)(c)

2) In determining under para. 1) whether it would be in interest of public protection to have Juv report under § 301.45, Ct may consider any of the following

   a. Ages, at the time of the violation, of Juv and victim

b. Relationship between Juv and victim

c. Whether violation resulted in bodily harm as defined in § 939.22(4) to victim

d. Whether victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions

e. Probability that Juv will commit other violations in future

f. Any other factor Ct determines may be relevant to particular case

§ 938.34(15m)(bm)

3) If Juv found delinquent on basis of violation or solicitation, conspiracy, or attempt to commit a violation of §§ 940.22(2), 940.225(1), (2), or (3), 944.06, 948.02(1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, or 948.085(2), 948.095, 948.11(2)(a) or (am), 948.12, 948.13, or 948.30, or § 940.302(2) if § 940.302(2)(a)1.b. applies, or § 940.30 or § 940.31 if victim was a minor and Juv not victim's parent, Ct shall require Juv to comply with reporting requirements under § 301.45 unless Ct determines, after hearing on motion by Juv, that Juv not required to comply under § 301.45(1m)

§ 938.34(15m)(d)

4) If Ct orders Juv to comply with reporting requirement under § 301.45, Ct may order Juv to comply until death

§ 301.45(1m)

a. A person is not required to comply with the reporting requirement if either

- The person meets the criteria under § 301.45(1g)(a)–(dd) based on any violation, or on the solicitation, conspiracy, or attempt to commit any violation, of § 948.02(1) or (2), 948.025, or 948.085(2); AND such violation, or solicitation/conspiracy/attempt did not involve sexual intercourse as defined in § 948.01(6), either by the use or threat of force or violence or with a victim under age 12; AND the person had not attained age of 19 years and was not more than 4 years older or not more than 4 years younger than the child victim; AND it is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements of § 301.45, OR

- The person violated, or solicited/conspired/attempted to commit a violation of 3rd-degree sexual assault under § 940.225(3)(a); AND the person had not attained age of 19 years and the victim had attained the age of 15 years; AND it is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements of § 301.45

Committee Comment

b. Best practices call for the judge to make clear findings regarding the above

§ 938.34(15m)(e)

5) If Ct orders Juv to comply with reporting requirements under § 301.45, Clerk shall forward copy of order to DOC. If delinquency finding reversed, set aside, or vacated, Clerk shall forward to DOC certificate stating finding of delinquency has been reversed, set aside, or vacated

§ 301.475(1), (2), (3)(d)

6) If Ct orders Juv to comply with reporting requirements under § 301.45, Juv cannot be on any school premises without proper notice; except, if Juv is a student at the school, Juv may be on school grounds if DOC works out plan with school to ensure safety of students attending

§ 938.34(16)
St v Cesar G
(In Int of Cesar G)
2004 WI 61
272 Wis. 2d 22

7) Ct may stay sex offender registration under § 301.45

a. Ct should consider seriousness of offense, as well as factors in §§ 938.34(15m)(c) and 301.45(1m)(e)

b. If Juv moves for stay, Juv has burden of proving, by clear and convincing evidence, that stay should be granted, based on statutory factors

8. AEM Dispositions

§ 48.347(1)

A. Ct may counsel AEM

§ 48.347(2)

B. Ct may place AEM under supervision of Cty Dept or DCF (if it approves) or suitable adult

1) Ct may prescribe reasonable rules for AEM's conduct designed for physical well-being of UC

2) Ct may include order to participate in mental health treatment, anger management, individual or family counseling, or prenatal development training or education and to make reasonable contribution, based on ability to pay, for cost of services

§ 48.347(3)

C. Ct may place AEM in home of adult relative or friend or CBRF defined in § 50.01(1g)

§ 48.347

1) Ct may not place outside home unless Ct finds

a. AEM is refusing or has refused to accept any AODA services offered to her, or

b. AEM is not making or has not made a good-faith effort to participate in any AODA services offered to her

§ 48.347(4)

D. Ct may order special treatment or care as identified under § 48.295

1) If AEM fails or is financially unable to obtain, Judge may order appropriate agency to provide

a. If Judge orders Cty Dept under §§ 51.42 or 51.437 to provide special treatment or care, provision subject to conditions specified in Ch 51

b. Order may not include order for psychotropic drugs

2) Payment for AODA services shall be in accordance with § 48.361

3) Payment for services under Ch 51 shall be in accordance with § 48.362

§ 48.347(5)

E. Ct may order AOD treatment or education

1) If Ct report recommends AOD treatment, Judge may order AEM to enter outpatient AODA treatment program at approved facility

a. Facility shall report to primary agency

- Whether AEM cooperating with treatment
- If treatment appears to be effective

2) If Ct report recommends AOD education, Judge may order AEM to participate in AODA educational program approved by Cty

a. Program provider shall report to primary agency about AEM's attendance at program

3) Payment for any treatment or education in counties that have AODA program under § 48.547 shall be in accordance with § 48.361

§ 48.347(6)

F. Ct may order inpatient AOD treatment, if Judge finds AEM in need of inpatient treatment for her habitual lack of self-control in use of alcohol, controlled substances or controlled substance analog, exhibited to a severe degree and that inpatient treatment appropriate and least restrictive treatment consistent with AEM's needs

1) Inpatient facility shall, under terms of service agreement or with written informed consent of AEM, report to agency responsible for providing services if AEM cooperating with treatment and if treatment appears to be effective

2) Payment for treatment shall be in accordance with § 48.361

§ 48.347(7)

G. Ct may provide for services for child when born

1) If it appears UC to be born during period of dispositional order, Judge may order that child, when born, be provided any services or care that Judge may order for CHIPS under § 48.345

§ 48.347

H. Ct may <u>not</u> do the following

Chs 51, 54, 55

1) Place any AEM in treatment facilities for developmental disabilities or mental illness unless provisions of appropriate chapters complied with

2) Place AEM outside home unless Ct finds

a. AEM refusing or has refused to accept any AODA services offered to her, or

b. AEM not making or has not made a good-faith effort to participate in any AODA services offered to her

§ 938.345

9. JIPS Dispositions

A. Ct shall enter order deciding one or more of dispositions in § 938.34 (See Sec. 7 above) under a care and treatment plan

§ 938.345(1m)

B. If Juv is Indian Juv, and Ct is ordering out-of-home placement, Ct must consider order of placement preference set forth in ICWA, § 938.028(6)(a)1.–4., unless good cause for departure

§ 938.345(1)

C. Ct may not do the following in JIPS cases

§ 938.345(1)(a)

1) Place Juv in SJO program, Juv correctional facility, or secured RCCCY

§ 938.345(1)(c)

2) Impose a forfeiture or surcharge

§ 938.345(1)(d), (2)

3) Restrict or suspend the driving privilege EXCEPT

a. If JIPS because of habitual truancy or as a school dropout and reason Juv has dropped out of school or is an habitual truant is result of Juv's intentional refusal to attend school

§ 938.345(1)(e)
Chs 46, 48, 49, 51, 54, 115

4) Place Juv in treatment facility for developmental disabilities, mental illness, or exceptional educational needs unless provision of appropriate Chs complied with

§ 938.345(1)(g)

5) Place Juv in Juv detention facility or Juv portion of Cty jail, or in nonsecure custody under § 938.34(3)(f)

§ 938.345(3)

D. If Juv is found in need of protection or services on basis of violation or solicitation, conspiracy, or attempt to commit a violation under Chs 940, 944, or 948, or § 942.08 or § 942.09, or§§ 943.01–.15

1) Ct may require Juv to comply with reporting requirements under § 301.45 if Ct determines underlying conduct was sexually motivated as defined in § 980.01(5), and that it is in the interest of public protection to have Juv report

NOTE: If Ct orders Juv to comply with reporting requirements under § 301.45 in connection with violation, or solicitation, conspiracy, or attempt to commit violation, of § 942.09, Ct may provide that Juv be released from § 301.45 reporting requirements upon satisfying conditions of dispositional order imposed for the offense. If Juv satisfies conditions, Ct must notify DOC that Juv has satisfied conditions of order.

§ 938.345(4)

2) If Ct finds Juv in need of protection or services under § 938.13(4), Ct, instead of or in addition to any other disposition, may place Juv in home of a guardian under § 48.977(2)

3) In determining whether to have Juv report under § 301.45, Ct may consider any of the following

a. Ages, at the time of the violation, of Juv and victim

b. Relationship between Juv and victim

c. Whether violation resulted in bodily harm as defined in § 939.22(4) to the victim

d. Whether victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions

e. Probability that Juv will commit other violations in future

f. Any other factor Ct determines may be relevant to particular case

§ 938.345(3)(b)

4) If Ct orders Juv to comply with reporting requirements under § 301.45, Ct may order Juv to comply until death

§ 938.345(3)(c)

5) If Ct orders Juv to comply with reporting requirements under § 301.45, Clerk shall forward copy of order to DOC. If JIPS finding is reversed, set aside, or vacated, Clerk shall promptly forward to DOC a certificate stating that the finding has been reversed, set aside, or vacated

10. Case Closure Orders

§ 48.355(4g)
§ 938.355(4g)

A. Juv Ct may modify Family Ct order and terminate Juv Ct order when:

1) Child is in a safe parental placement

2) Pending or existing Family Ct order anywhere in Wis

3) Disposition has been entered in CHIPS, JIPS, or delinquency

JV 9: ASFA AND PERMANENCY PLANNING

ADOPTION AND SAFE FAMILIES ACT (ASFA) AS ADOPTED IN WISCONSIN

1. Introduction

65 FR 4020 (2000)

A. In November 1997, the Adoption and Safe Families Act (P.L. 105-89) was signed into law. The Act places emphasis on physical safety of children in placement determinations and on timely achievement of permanent placement for children

1) ASFA provisions apply to Ch 48 and Ch 938 proceedings (delinquencies, CHIPS, and JIPS)

2) ASFA imposes very significant financial penalties if a state is found to be noncompliant with its provisions

See Thomas Y v St Croix Cty (In Int of Scott Y)
175 Wis. 2d 222
(CA 1993)

3) Violations of ASFA time periods do not deprive Ct of jurisdiction

2. Critical Judicial Findings Under ASFA as Adopted in Wisconsin

See Time Constraints Flow Charts at **JV 3**

§ 48.21(5)(b)1.
§ 938.21(5)(b)1.

A. The first Ct order that sanctions, even temporarily, removal of child/Juv from home must include the following (this does not include a voluntary placement agreement):

§ 48.355(2)(b)6.
§ 938.355(2)(b)6.
§ 48.357(2v)
§ 938.357(2v)(a)

1) Finding that continued placement of child/Juv in home would be contrary to the welfare of child/Juv

2) Finding as to whether person who took child/Juv into custody and intake worker have made reasonable efforts to prevent removal of child/Juv from home, while assuring child/Juv health and safety are paramount concerns, unless reasonable efforts not required

3) Finding as to whether person who took child/Juv into custody and intake worker have made reasonable efforts to make it possible for child/Juv to return safely home

§ 48.21(5)(b)1m.
§ 938.21(5)(b)1m.

4) If good cause shown and sufficient info not available for Ct to make a finding as to whether reasonable efforts were made to prevent removal of child/Juv from home, while assuring that child's/Juv's health and safety are paramount concerns, Ct must

a. Make finding as to whether reasonable efforts were made to make it possible for child/Juv to return safely home, and

b. Order agency primarily responsible for providing services to child /Juv to file with Ct sufficient info to make finding as to whether reasonable efforts were made to prevent removal of child/Juv from home no later than 5 days after date on which hearing/order is granted, excluding Saturdays, Sundays, and legal holidays

§ 48.355(2)(b)6d.
§ 938.355(2)(b)6d.

5) Placement in RCCCY, group home, or shelter care facility

a. If child/Juv is held in custody in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, a finding as to each of the following after considering the standardized assessment and the recommendation of the qualified individual under § 48.21(1)(c)/§ 938.21(1)(c):

- Whether the needs of the child/Juv can be met through placement in a foster home
- Whether placement of child/Juv in RCCCY, group home, or shelter care facility provides most effective and appropriate level of care for child/Juv in least restrictive environment
- Whether placement is consistent with short-term and long-term goals for child/Juv, as specified in the permanency plan
- Whether Ct approves or disapproves of the placement

§ 48.355(2)(cd)
§ 938.355(2)(cd)

b. If results of standardized assessment and recommendation of qualified individual who conducted the standardized assessment are required but not available at the time of the order, then Ct shall defer making the findings under § 48.355(2)(b)6d./§ 938.355(2)(b)6d. as provided in § 48.355(2)(cd)/§ 938.355(2)(cd). However, no later than 60 days after the date on which the placement was made, the Ct shall issue an order making findings under § 48.355(2)(b)6d./§ 938.355(2)(b)6d.

§ 48.315(2m)
§ 938.315(2m)

6) Exclusions of time periods authorized pursuant to § 48.315(1) and § 938.315(1) are inapplicable to time periods for findings under ASFA

§ 48.21(5)(b)1.d.
§ 938.21(5)(b)1.d.

7) If child/Juv under supervision of Cty Dept or DCF (in Ch 48 case in Cty with population of 750,000 or more), order child/Juv into placement and care responsibility of that agency and assign it primary responsibility for providing services

§ 938.355(6)(cm)

8) Findings that reasonable efforts have been made to prevent removal and that continued in-home placement is contrary to welfare are not necessary in sanctioning order if made in dispositional order under which Juv being sanctioned

§ 48.21(5)(c)
§ 938.21(5)(c)

9) Findings must be made on case- and child/Juv-specific basis and document or reference specific information on which findings are based. Without such findings, federal foster care funding may not be available for duration of placement

§ 48.21(5)(c)
§ 938.21(5)(c)
45 CFR 1356.21(d)

10) Retroactive orders and general references to state statutes are not sufficient to meet documentation requirements

§ 48.355(2d)(b)
§ 938.355(2d)(b)

11) Reasonable efforts to prevent removal or achieve permanency goal of returning child/Juv safely home are not necessary if Ct finds

a. Parent has subjected child/Juv to aggravated circumstances as defined by state law, which may include abandonment, torture, chronic abuse, or sexual abuse, as evidenced by final judgment of conviction

b. Parent has committed murder of another child of the parent; committed voluntary manslaughter of another child of the parent; aided, abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter as evidenced by a final judgment of conviction

c. Parent committed felony battery/sexual assault/child abuse, as evidenced by final judgment of conviction, and battery/assault/abuse resulted in great or substantial bodily harm to child/Juv or another child of parent

§ 48.355(2d)(b)3m.
§ 938.355(2d)(b)3m.

d. Parent committed child trafficking against parent's child, as evidenced by final judgment of conviction

e. Parental rights of parent to another child of the parent have been involuntarily terminated, as evidenced by final order

f. In Ch 48 case, parent has been found under § 48.13(2m) to have relinquished custody of child under § 48.195(1m)

g. Findings above must be case- and child/Juv-specific

§ 48.355(2d)(d)
§ 48.028(4)(d)2.
§ 938.355(2d)(d)
§ 938.028(4)(d)2.

h. Out-of-home placement of Indian child/Juv, even when reasonable effort standard does not apply, may only be ordered with proof that State made active efforts to provide remedial services to prevent the breakup of Indian family

§ 48.21(5)(d)
§ 938.21(5)(d)
§ 48.38(4m)
§ 938.38(4m)

12) If Ct determines that reasonable efforts are not required under standards set forth above, permanency hearing must be held within 30 days after finding

a. Permanency plan must be filed not less than 5 days before hearing under § 48.38(4m)/§ 938.38(4m)

§ 48.417

13) If Ct determines that reasonable efforts not required because child is abandoned child under age of one or because parent has been convicted of offense specified in § 48.417, TPR petition must be filed or joined in within 60 days after determination that no reasonable efforts required, unless exception to TPR filing requirement applies

§ 48.417(2)

a. TPR filing requirement does not apply if

- Fit and willing relative is caring for child
- Child's permanency plan indicates and provides documentation that TPR is not in child's best interest
- Grounds do not exist for (involuntary) TPR
- Responsible agency has failed to provide services deemed necessary for safe return of child to the home (if required), OR
- In case of Indian child, agency primarily responsible for providing services to child and family under Ct order, if required under § 48.355(2)(b)6v. to make active efforts under § 48.028(4)(d)2., has failed to provide services necessary to prevent breakup of Indian child's family, consistent with the child's permanency plan

45 CFR 1356.21(i)(3)
§ 48.417(3)

b. When TPR petition is filed, agency must concurrently begin to identify, recruit, process, and approve adoptive family for child

§ 48.355(2)(b)6.
§ 938.355(2)(b)6.
§ 48.38(5), (5m)
§ 938.38(5), (5m)
§ 48.315(2m)
§ 938.315(2m)
§ 48.365(2m)
§ 938.365(2m)
45 CFR 1356.21(b)(2)

B. Ct must make finding that, if permanency plan previously prepared for child/Juv, agency has made reasonable efforts to "achieve the permanency goal of the child's/Juv's permanency plan" (whether goal is return home, TPR/adoption, guardianship, relative placement, or, if child/Juv is 16 years of age or older, placement in some other planned permanent living arrangement), including through out-of-state placement. If such finding not made within 12 months after date child/Juv removed from home or within 6 months after last review/hearing, no federal foster care funding available until such finding made

1) Finding must be made within earlier of 12 months from removal or 6 months from last review/hearing

§ 48.38(5)(c)7.
§ 938.38(5)(c)7.

2) The reasonable efforts finding is only required on the permanency goal, not any concurrent permanency goal

§ 48.315(2m)
§ 938.315(2m)

C. Exclusions of time periods authorized pursuant to § 48.315(1) and § 938.315(1) are inapplicable to time periods for findings under ASFA

3. TPR Filing Requirements Under ASFA as Adopted in Wisconsin

§ 48.417

A. If child is in a foster home, group home, nonsecured RCCCY, or shelter care facility 15 out of last 22 months, State must file or join petition for TPR, unless one of the statutorily recognized exceptions applies (child is placed with relative; absence of TPR grounds; agency has failed to provide the services deemed necessary for the safe return of child, if required; absence of active efforts to provide services needed to prevent breakup of Indian family; permanency plan indicates and documents TPR not in child's best interest)

1) Petition must be filed by end of child's 15th month in foster care, not including periods of runaway or time residing in a trial reunification home

B. If child in out-of-home care and Ct has found no reasonable efforts standard applies (child abandoned under age one or parent committed specified felonies), State must file or join involuntary TPR petition within 60 days after finding unless TPR exceptions apply

4. Permanency Planning

A. State law requirements

§ 48.38(6)
§ 938.38(6)

1) DCF and DOC to promulgate rules establishing the following

a. Procedures for conducting permanency reviews

b. Requirements for training review panels

c. Standards for reasonable efforts to prevent out-of-home placement of children/Juvs and make it possible for children/Juvs to return home safely

d. Format for permanency plans and review panel reports

e. Standards and guidelines for decisions regarding placement of children/Juvs

§ 48.355(2b)
§ 938.355(2b)

2) Concurrent planning

a. Agency shall determine whether to engage in concurrent planning in accordance with DCF/DOC standards

b. If agency determines concurrent planning is required, agency must engage in it unless Ct or permanency review panel determines concurrent planning is inappropriate

c. "Concurrent planning" means appropriate efforts to work simultaneously toward achieving more than one of the permanency goals

B. Permanency plan

§ 48.38, § 938.38

1) Permanency plan

§ 48.38(1)(b)
§ 938.38(1)(b)

a. Plan to be designed to ensure that child/Juv reunified with family whenever appropriate or that child/Juv quickly attains placement or home providing long-term stability

§ 48.38(2)
§ 938.38(2)

b. Plan prepared by agency that placed child/Juv or arranged placement or by agency assigned primary responsibility for providing services to child/Juv

c. Plan required for each child/Juv living in the following if any conditions listed under para. d. below exist:

- Foster home
- Group home
- RCCCY

- Juv detention facility
- Shelter care facility
- Supervised independent living arrangement
- QRFTF
- Home of guardian or relative who is not a parent

§ 48.358(1), (2)
§ 938.358(1), (2)

- Trial reunification home under trial reunification order

d. Plan required for child/Juv living in placements in para. c. above if

- Child/Juv held in physical custody under §§ 48.207, 48.208, or 48.209/§§ 938.207, 938.208, or 938.209(1)
- Child/Juv in legal custody of agency
- Child/Juv under supervision of agency because in foster home or group home under consent decree or dispositional order
- Child/Juv placed in foster home or group home under voluntary agreement between agency and child's/Juv's parent
- Child/Juv under agency guardianship
- Child's/Juv's care eligible for payment under § 49.19

— No permanency plan required if relative care and only § 48.38(2)(f)/§ 938.38(2)(f) applies

- Child's parent in out-of-home placement, and child is residing with that parent

§ 48.38(3), § 938.38(3)

e. Plan filed with Ct within 60 days after date child/Juv first removed from his/her home

§ 48.315(3)
§ 938.315(3)

- Failure to act within time periods under Ch 48/Ch 938 is nonjurisdictional

§ 48.38(3)
§ 938.38(3)(b)

- Plan not required if child/Juv held for less than 60 days in Juv detention facility, Juv portion of Cty jail, or shelter care facility and then returned home

§ 48.355(2d)(c)
§ 48.38(4m)
§ 938.355(2d)(c)
§ 938.38(4m)

- If Ct determines reasonable efforts not required, Ct must hold permanency hearing within 30 days and permanency plan must be filed 5 days before hearing

§ 938.38(3)(a)

f. Plan not required if all the following exist

- Juv is alleged delinquent, and
- Juv being held in Juv detention, Juv portion of Cty jail or shelter care facility, and
- Agency intends to recommend placement in Juv correctional facility or secured RCCCY, and
- Ct accepts plan

g. If Ct does not accept agency recommendation and places Juv out of home in other than Juv correctional facility or secured RCCCY

- Agency must file plan with Ct within 60 days after date of disposition

§ 48.38(4)
§ 938.38(4)

h. Plan to include all the following

- Name, address, and phone number of parent, guardian, legal custodian
- Date child/Juv removed from home and date placed in out-of-home care
- Description of services offered and provided in effort to prevent removal from home and to achieve the permanency goal of permanency plan
  - — Except: not required if no finding of reasonable efforts required or if child/Juv has attained 18 years of age
- Basis for decision to hold child/Juv in custody or place outside home
- Statement as to availability of safe and appropriate placement with fit and willing relative and

- If decision made not to place with available relative, statement why such placement not safe or appropriate

- If child/Juv has one or more siblings who have also been removed from home, description of joint placement efforts. If siblings not jointly placed, statement as to why joint placement would be contrary to child's/Juv's/siblings' safety or well-being and description of efforts to provide for frequent visitation or other ongoing interaction. If no such visitation or interaction, then permanency plan must include statement as to why it would be contrary to child's/Juv's/siblings' safety or well-being

- Location and type of facility of current and proposed placements

- If child/Juv living more than 60 miles from home, documentation that placement within 60 miles unavailable or inappropriate

  - Placement of child in licensed foster home more than 60 miles presumed to be in child's best interest if documentation shows placement pursuant to voluntary agreement and made to facilitate anticipated adoptive placement

- Information about child/Juv's education, including

  - Name and address of school where child/Juv is or was most recently enrolled

  - Any special education programs in which child/Juv is or was previously enrolled

  - Grade level in which child/Juv is or was most recently enrolled and all information available concerning grade level performance

  - Summary of all available education records relevant to education services plan

- If, as result of placement, child/Juv has been or will be transferred from school in which child/Juv is or was most recently enrolled, documentation that a placement that would maintain child/Juv in that school is either unavailable or inappropriate or that a placement that would result in child's/Juv's transfer to another school would be in the child's/Juv's best interest

- Medical information, including

  - Name and addresses of physician, dentist, and any other health-care provider that is or was providing health-care services

  - Immunization record, including name and date of each immunization administered to child/Juv

— Any known medical condition for which child/Juv receiving medical care or treatment and any serious medical condition for which child/Juv has previously received medical care or treatment

— Name, purpose, and dosage of any medication being administered to child/Juv and name of any medication that causes child/Juv to suffer allergic or other negative reaction

- Plan for ensuring safety and appropriateness of placement and description of services to meet child/Juv's and family's needs, including

— Services investigated and considered that are not available or likely to become available within reasonable time, or

— If available, why services not safe or appropriate

- Description of services to be provided to child/Juv, family, foster parent, facility operator, or relative with whom child/Juv living to carry out dispositional order, including services to accomplish ALL of the following

— Ensure proper care and treatment child/Juv and promote stability in placement

— Meet child's/Juv's physical, emotional, social, educational, and vocational needs

— Improve condition of parents' home to facilitate child's/Juv's safe return or, if appropriate, to obtain placement for adoption, with guardian or with fit and willing relative, or, in the case of a child/Juv 16 years of age or over, obtain for the child/Juv, if appropriate, a placement in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult

- Goal of permanency plan, or if agency is engaging in concurrent planning, the permanency and concurrent permanency goals of permanency plan:

— If goal of permanency plan is placement for adoption, with a guardian, or with a fit and willing relative, permanency plan shall include efforts made to achieve that goal, including through an out-of-state placement if appropriate

— If the agency determines to engage in concurrent planning, plan must include the rationale for that determination and description of the concurrent plan

§ 48.38(4)(fg)5.
§ 938.38(4)(fg)5.

— The agency shall determine one or more of the following goals: (1) return of child/Juv to home; (2) placement of child/Juv for adoption, (3) placement of child/Juv with guardian, (4) permanent placement of child/Juv with fit and willing relative, or (5) in the case of child/Juv 16 years of age or over, placement in some other planned permanent living arrangement that includes an appropriate enduring relationship with

an adult

§ 48.38(4)(fm)
§ 938.38(4)(fm)

- If goal of permanency plan is to place child/Juv 16 years of age or over in some other planned permanent living arrangement, the plan must include:
  - Efforts made to achieve that permanency goal, including through an out-of-state placement if appropriate
  - Statement of compelling reason why other permanency goals are not in child/Juv's best interest
  - Concurrent plan toward achieving one of the other permanency goals
  - Plan to ensure that child/Juv has regular, ongoing opportunities to engage in age or developmentally appropriate activities in accordance with reasonable and prudent parent standard. See § 48.383/§ 938.383 for definition of "reasonable and prudent parent standard"

- Conditions, if any, upon which child/Juv will be returned safely home, including any changes required in
  - Parent's conduct
  - Child/Juv's conduct
  - Nature of home

- Statement as to whether child/Juv's age and developmental level are sufficient for Ct or panel to consult with child/Juv at permanency hearing/review and, if not, why not

- If ICWA child/Juv:
  - Contact information for child's/Juv's Indian custodian and tribe
  - Services and programs offered to prevent the breakup of the Indian child's/Juv's family
  - Statement whether ICWA placement preferences have been complied with or whether good cause is shown for deviating from placement preferences

§ 48.38(4)(h)
§ 938.38(4)(h)

- If child/Juv is 14 or over, plan describing programs and services that are or will be provided to assist child/Juv in preparing transition from out-of-home care to successful adulthood, including

§ 48.385

  - During 90 days before child in out-of-home care turns 18 (or 90 days before termination of order that expires after child's 18th birthday), agency responsible for child shall provide child with support and assistance to develop a transition plan to independent living
  - Anticipated age at which child/Juv will be discharged from out-of-home care
  - Anticipated amount of time available in which to prepare the child/Juv for the transition from out-of-home care to successful adulthood
  - Anticipated location and living situation of child/Juv on discharge from out-of-home care
  - Description of assessment processes, tools, and methods that have been or will be used to determine programs and services that are or will be provided to assist child/Juv in preparing for transition from out-of-home care to successful adulthood
  - Rationale for each program or service that is or will be provided to assist child/Juv in preparing for transition from out-of-home care to successful adulthood, time frames for delivering those programs or services, and intended outcome of programs or services
  - Documentation that plan was prepared in consultation with the child/Juv and any persons selected under § 48.38(2m)/§ 938.38(2m)
  - Document that describes child's/Juv's various rights under § 48.38(4)(h)7/§ 938.38(4)(h)7. and signed acknowledgment that child/Juv has received copy and appropriate explanation of rights

§ 48.38(4)(j)
§ 938.38(4)(j)

- If child/Juv in placement under a subsidized guardianship
  - Steps agency has taken to determine that return home or adoption is not an option
  - If siblings not jointly placed, reasons for separate placements
  - Reasons why placement with relative or other subsidized guardian is in child's best interest and, if ICWA child/Juv, best interest determination made pursuant to ICWA standards
  - Ways in which placement meets eligibility for subsidized guardianship payments
  - Efforts agency made to discuss adoption with the guardian and reasons that guardian chose not to pursue adoption

— Efforts that agency made to discuss subsidized guardianship with parent(s) or why efforts to discuss could not be made

§ 48.38(4)(k)
§ 938.38(4)(k)

- If the child/Juv is placed in a qualified residential treatment program

— Documentation of reasonable and good-faith efforts to identify and include all required individuals on permanency team

— Contact information for members of family permanency team

— Information showing that meetings of family permanency team are held at time and place convenient for family

— If reunification is child's/Juv's permanency goal, information demonstrating that the parent from whom the child/Juv was removed provided input on the members of permanency team

— Information showing that standardized assessment was used to determine appropriateness of placement

— Placement preferences of family permanency team

— If placement preferences of family permanency team are not recommended by qualified individual conducting standardized assessment, reasons why those preferences were not recommended

— Recommendations of the qualified individual who conducted the standardized assessment, including:

Whether the recommended placement in a qualified residential treatment program is the placement that will provide the child/Juv with the most effective and appropriate level of care in the least restrictive environment and how that placement is consistent with short-term and long-term permanency goals

Whether and why the child's/Juv's needs can or cannot be met by the child's/Juv's family or in a foster home

— Documentation of the approval or disapproval of the placement in a qualified residential treatment program by a Ct

§ 48.38(4)(L)
§ 938.38(4)(L)

- If the child/Juv is a parent or is pregnant, all of the following:

— List of services or programs to be provided to ensure child/Juv is prepared to be a parent or, if a parent, is able to parent

— Out-of-home care prevention strategy for any child born to the parenting or pregnant child/Juv

5. Review of Plan

§ 48.38(5)(a)
§ 938.38(5)(a)

A. Plan must be reviewed

1) Within 30 days after "no reasonable efforts" finding

2) If reasonable efforts required, not later than 6 months after child removed from home and every 6 months after previous review hearing for as long as child placed outside home

§ 48.315(2m)
§ 938.315(2m)

3) Exclusions of time periods authorized pursuant to § 48.315(1) and § 938.315(1) are inapplicable to time periods for findings under ASFA

§ 48.38(5)(a)
§ 938.38(5)(a)

4) Time periods for conducting permanency reviews/hearings include trial reunifications under § 48.358/§ 938.358

§ 48.38(5)(a)
§ 938.38(5)(a)
§ 48.315(2m)(b)
§ 938.315(2m)(b)

B. Ct must hold hearing to review permanency plan at 12-month intervals

1) First permanency review must occur within 12 months after child's/Juv's removal from home and every 12 months after previous review for as long as child/Juv placed outside home

§ 48.38(5)(am)
§ 938.38(5)(am)

2) If Ct elects not to conduct 6-month interval reviews

a. Ct may appoint panel to review, or

b. Ct may appoint independent agency to conduct 6-month interval reviews

§ 757.69(1)(g)14.

3) Ct Comm'rs may conduct permanency reviews

§ 48.38(5)(ag)
§ 938.38(5)(ag)

C. Review panel to consist of at least three persons

1) A voting majority of persons on panel must

a. Not be employed by agency that prepared plan and

b. Not be responsible for providing services to child/Juv or parents

§ 48.38(5)(d)
§ 938.38(5)(d)

2) Review panel shall be allowed access to child's/Juv's records for purpose of participating in review but may not disclose any information to any other person

§ 48.38(5)(b)
§ 938.38(5)(b)

D. Ct or agency to notify, in writing, not less than 30 days before review, with copy of notice filed in child's/Juv's case record:

1) Child in CHIPS proceeding/Juv in JIPS or delinquency proceeding

2) Child's/Juv's parent, guardian, or legal custodian

3) Child's/Juv's foster parent or operator of facility where child/Juv living

4) Relative with whom child is living

5) Prosecutor, child's/Juv's counsel, child's/Juv's GAL, and child's CASA

6) If Indian child/Juv placed outside home, Indian custodian and tribe

7) School

§ 48.64(1r)

a. Notice to school shall also include name and contact information for caseworker or social worker assigned to case. If placement is out-of-home and school will be changing, then notice shall also be given to new school

§ 48.38(5)(b)
§ 938.38(5)(b)

E. Notification to include

1) Time, place, and purpose of review

2) Fact that persons in **Sec. D.** above may participate in review

§ 48.38(5)(bm)2.
§ 938.38(5)(bm)2.
§ 48.38(5)(bm)3.
§ 938.38(5)(bm)3.

a. Panel or Ct shall consult with child/Juv if age and developmental level make it appropriate. If not, child's/Juv's caseworker, counsel, or GAL may express child's/Juv's wishes. If other planned permanent living arrangement, panel or Ct shall consult with child/Juv about permanency outcome desired by child/Juv

3) Issues to be determined as part of review

§ 48.38(5)(bm)1.
§ 938.38(5)(bm)1.

4) Right (or opportunity, in case of prosecutor, child's/Juv's counsel, child's/Juv's GAL, child's CASA, and school) to participate in review hearing by submitting written comments not less than 10 working days before review

§ 48.38(5)(d)
§ 938.38(5)(d)

5) Agency that prepared permanency plan shall, at least 5 days before review date, provide copies of written permanency plan and any written comments received to

a. Ct or panel members

b. Child's/Juv's parent, guardian, or legal custodian

c. Prosecutor

d. Child's/Juv's counsel/GAL and child's CASA

e. If Indian child placed outside home under Ch 48 or Indian Juv placed outside home under § 938.13(4), (6), (6m), or (7), Indian custodian and tribe

§ 48.38(5)(bm)3.
§ 938.38(5)(bm)3.

6) If goal is some other planned permanent living arrangement, agency shall present to panel or Ct

a. Specific information showing intensive and ongoing efforts were made, including searching social media, to return child/Juv home or to place child/Juv for adoption, with a guardian, or with a fit and willing relative and that those efforts have proved unsuccessful; and

b. Specific information showing steps taken, including consultation with child/Juv, to ascertain whether child/Juv has regular, ongoing opportunities to engage in age or developmentally appropriate activities and to ensure that the child's/Juv's caregiver is applying the reasonable and prudent parent standard to decisions concerning the child's participation in those activities

NOTE: Whether presentation to be included in plan, or to be made orally at hearing/review, unclear.

§ 48.38(5)(bm)4., (5m)(c)4.
§ 938.38(5)(cm), (5m)(c)4.

7) If the child/Juv is placed in a qualified residential treatment program, agency shall submit specific information showing all of the following

a. Whether ongoing assessment of the strengths and needs of child/Juv continues to support determination that needs of the child/Juv cannot be met through placement in foster home, whether placement in qualified residential treatment program provides most effective and appropriate level of care for child/Juv in least restrictive environment and how placement is consistent with short-term and long-term permanency goals

b. Specific treatment or service needs that will be met for child/Juv in placement and length of time child/Juv is expected to need treatment

c. Efforts made by agency to prepare child/Juv to return home or to be placed with a fit and willing relative, guardian, or adoptive parent or in foster home

§ 48.38(5)(c)
§ 938.38(5)(c)

F. Ct or panel to determine each of the following

1) Continuing necessity for and appropriateness of placement

§ 48.38(5)(c)1.
§ 938.38(5)(c)1.

2) If goal is some other planned permanent living arrangement, an explanation of why the other planned permanent living arrangement is best permanency goal for child/Juv and why, supported by compelling reasons, it continues not to be in in best interests of child/Juv to be returned home or be placed for adoption, with a guardian, or with a fit and willing relative

3) Extent of compliance with plan by

a. Agency

b. Other service provider(s)

c. Parents

d. Child/Juv

e. Child's/Juv's guardian, if any

4) Extent of efforts to involve appropriate service providers in addition to agency's staff in planning to meet special needs of child/Juv and parents

5) Progress in eliminating causes for child's/Juv's placement out of home and toward returning child/Juv safely home or obtaining permanent placement

6) Date by which it is likely child/Juv returned home, placed for adoption, with guardian, with a fit and willing relative, or in other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult

7) Continuing appropriateness according to DCF/DOC standards of permanency goal and, if the Ct or panel considers appropriate, any concurrent permanency goals

a. If Ct or panel does not approve of any of those goals or determines a concurrent permanency goal is appropriate, the Ct or panel shall determine the permanency goal and any concurrent permanency goals

8) If child/Juv out of home, in a foster home, group home, nonsecured RCCCY, or shelter care facility, for 15 or more of most recent 22 months, appropriateness of plan and circumstances that prevent child/Juv from being returned safely home, being placed in child's/Juv's fit and willing relative's home, having TPR petition filed on his/her behalf, being placed with guardian, being placed for adoption, or being placed in some other planned permanent living arrangement that includes an appropriate, enduring relationship with an adult

a. Do not count runaway periods or trial reunification

§ 48.38(5)(c)7m.
§ 938.38(5)(c)7m.

9) If goal is other planned permanent living arrangement, steps taken by agency, including consultation with child/Juv, to ascertain whether child/Juv has regular, ongoing opportunities to engage in age or developmentally appropriate activities and to ensure caregiver is applying the reasonable and prudent parent standard to decisions concerning child's/Juv's participation in those activities

10) Whether reasonable efforts were made by agency to achieve permanency goal of permanency plan, including, if appropriate, through out-of-state placement

11) If child/Juv has siblings (including birth siblings who have been adopted), whether reasonable efforts were made to place them together, unless joint placement contrary to safety or well-being of child/Juv or siblings

a. If not jointly placed, whether reasonable efforts were made to provide frequent visitation and contact unless contrary to safety or well-being

12) If ICWA child/Juv placed outside the home, whether active efforts were made to prevent breakup of Indian family and whether those efforts were unsuccessful; whether ICWA placement preferences have been complied with or whether good cause is shown for deviating from placement preferences

13) If child/Juv is subject of an order that terminates when the child/Juv attains 21 years of age, the appropriateness of the transition-to-independent-living plan, extent of compliance with plan, and child's/Juv's progress toward making transition to successful adulthood

§ 48.38(5m)(e), (f)
§ 938.38(5m)(e), (f)

G. After the permanency hearing, Ct must make written findings of fact and conclusions of law relating to determinations required by Sec. F. above

1) Must be child/Juv-specific and reference specific information on which determinations are based

2) If determinations conflict with existing dispositional order or provide for additional services, Ct shall revise dispositional order under § 48.363/§ 938.363 order change of placement under § 48.357/§ 938.357, or order a trial reunification under § 48.358/§ 938.358

3) Send to all individuals entitled to notice of hearings

a. If Indian child/Juv placed outside home, Indian custodian and tribe

§ 48.356
§ 938.356

4) At conclusion of permanency hearing, Ct must warn parent(s) of any TPR grounds that may be applicable and of conditions of safe return to parental home or for parent to be granted visitation

§ 48.38(5)(e)
§ 938.38(5)(e)

H. Agency to prepare written summary of panel determinations within <u>30 days</u> after review with copy to

1) Ct that entered order

2) Child/Juv, Atty, or GAL

3) Child's/Juv's parent, guardian, or legal custodian

4) Child's CASA

5) Child's/Juv's foster parent, operator of facility where child/Juv living, or relative with whom child/Juv is living

6) Prosecutor

7) If Indian child/Juv placed outside home, Indian custodian and tribe

§ 48.38(5)(f)
§ 938.38(5)(f)

I. If written summary contains recommendations that conflict with dispositional order or provide for additional services not specified in dispositional order, primary agency must request revision of dispositional order

JV 10: TRAFFIC/CIVIL VIOLATIONS

1. Jurisdiction and Venue

A. Exclusive jurisdiction of Circuit Ct

§ 938.17(1)

1) Juv age 16 or older alleged to have violated

§ 23.33

a. All-terrain vehicle (ATV) and utility terrain vehicle regulations

§ 23.335

b. Limited-use off-highway motorcycle regulations

§ 30.50–.80

c. Boating regulations, EXCEPT

§ 30.67(1)

- Violation of duty when involved in a boating accident in which death or injury occurs

Chs 341–351

d. Vehicle and snowmobile regulations, EXCEPT

§ 342.06(2)

- False statement in application for certificate of title for vehicle subject to registration

§ 344.48(1)

- Forged proof of financial responsibility regarding automobile liability policy or bond

§ 346.67(1)

- Violation of duty upon striking person or attended or occupied vehicle when death or injury occurs

§ 345.20

e. Traffic regulations including

Ch 194

- Motor vehicle transportation violations

Chs 341–349

- Vehicle regulations

§ 349.06

- Violation of a traffic ordinance adopted in strict conformity with state law

§ 345.28(1)

f. Non-moving traffic regulations

§ 346.63(2m)

g. Underage drinking and driving ("absolute sobriety")

§ 938.17(3), § 167.32

2) Juv of any age alleged to have endangered safety at a sporting event by

a. Body passing

b. Bleacher passing

c. Bringing alcoholic beverages to a sporting facility

§ 938.17(1)

B. Exclusive jurisdiction of Juv Ct

1) Juv any age alleged to have

§ 342.06(2)

a. Made false statement in application for certificate of title for vehicle subject to registration

§ 344.48(1)

b. Forged proof of financial responsibility regarding automobile liability policy or bond

§ 346.67(1)

c. Violated duty upon striking person or attended or occupied vehicle when death or injury occurs

§ 30.67(1)

d. Violated duty when involved in a boating accident in which death or injury occurs

§ 938.17, § 938.125

2) Juv any age alleged to have violated a statute punishable by a civil forfeiture

§ 938.17(2)(a)

3) Juv age 11 or younger alleged to have violated an ordinance (EXCEPT truancy)

§ 938.17(2)(b)

4) Juv age 12 or older alleged to have violated an ordinance and there is no Municipal Ct

§ 938.185

5) Venue in any of the following

St v Corey JG
(*In Int of Corey JG*)
215 Wis. 2d 395 (1998)

a. County where Juv resides at time of filing citation

b. County where Juv is present at time of filing citation

c. County where violation of State law or Cty, town, or municipal ordinance occurred

§ 938.17(2)

C. Concurrent jurisdiction of Juv and Municipal Ct

1) Juv age 12 or over alleged to have violated an ordinance

a. EXCEPT where exclusive jurisdiction has been given to Circuit or Juv Cts (See **Secs. A.** and **B.** immediately above)

§ 938.17(2)(a)1m.

- Municipal Ct has exclusive jurisdiction for violation of municipal ordinances enacted under Ch 349 that are in conformity with Chs 341–349

b. For Municipal Ct actions, venue in municipality or Cty where violation of ordinance occurred

§ 938.185

c. For Juv Ct actions, venue in Cty where Juv resides or is present

2) Juv any age alleged to be truant

§ 938.17(2)(a)2.

a. Municipal Ct venue

- In municipality where administrative center of school district is located. If no ordinance, then

- In municipality where school is located. If no ordinance, then

- In municipality where Juv resides

b. Juv Ct venue

Comment

- Unclear if venue only in Cty where administrative center of school district located or if general venue provisions for Juv Ct (see **Sec. B.**5) above) apply

§ 938.17(1)

2. Procedure When Exclusive Jurisdiction in Circuit Court

A. Traffic, boating, snowmobile, ATV, utility terrain vehicle, and limited-use off-highway motorcycle violations

1) Same as Adult Ct procedure and sentencing

2) Except Ct may disregard any minimum period of incarceration specified for offense

§ 938.17(1)(b)

a. If period of incarceration for less than 6 months ordered, Juv may serve only in a Juv detention facility

§ 938.17(1)(c)

b. If period of incarceration is ordered for 6 months or more, Ct shall petition Juv Ct to order disposition under § 938.34, including placement in Juv correctional facility or secured RCCCY

§ 938.17(3)

B. Sporting event safety violations

1) Same as Adult Ct procedure and sentencing

2) Treated as adult for sentencing

C. Absolute sobriety violation

§ 346.63(2m)
§ 346.65(2q)

1) Mandatory $200 forfeiture

§ 343.30(1p)

2) Mandatory 3-month suspension of operating privilege

§ 346.65(2q)
§ 343.30(1p)

3) If there was a minor passenger under 16 at time of violation, mandatory $400 forfeiture and mandatory 6-month suspension

3. Procedure for Ordinance Violations in Municipal or Juvenile Court

§ 938.299(1)

A. Hearing must be closed unless Juv, through counsel, demands public fact-finding hearing

1) Persons who may be present

a. Parties

b. Counsel

c. Witnesses

d. Anyone requested by party and approved by Ct

e. Foster parent or other physical custodian

- Except Ct may exclude from any portion of hearing that deals with sensitive personal information of Juv or of family of Juv

- Except Ct may exclude if it determines exclusion is in best interest of Juv

§ 938.299(1)(a)

f. Any other person Ct finds to have proper interest in case or work of Ct, including Attys and persons engaged in the bona fide research, monitoring, or evaluations of activities conducted under 42 USC 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

g. Representative of news media who wishes to attend for purpose of reporting news without revealing identity of Juv

§ 938.299(1)(am)

h. Victim of Juv's alleged act, member of victim's family, or, at request of victim, representative of organization providing support services to victim

- Ct may exclude victim from portion of hearing not directly related to alleged act that deals with sensitive personal matters of Juv or family

§ 938.299(1)(b), Ch 785

2) Except under § 938.396 and when public hearing is conducted, anyone who divulges information that would identify Juv or family is subject to contempt of Ct

§ 938.17(2)(a)

B. If there IS a Municipal Ct and Juv is age 12 or older (Does not apply to truancy. See Sec. 8, *infra*)

1) Law enforcement may

§ 938.17(2)(a)3.
§ 938.237

a. Issue citation directing Juv to

- Appear in Municipal Ct, or
- Make a deposit or stipulation and deposit in lieu of appearance

§ 938.17(2)(a)1m.

- Municipal Ct has exclusive jurisdiction for violation of municipal ordinances enacted under Ch 349 that are in conformity with Chs 341–349

b. Issue citation directing Juv to

- Appear in Juv Ct, or
- Make a deposit or stipulation and deposit in lieu of appearance

§ 938.125

c. Refer to Juv Ct intake worker for determination regarding filing of civil law or ordinance petition

§ 938.17(2)(c)

2) Citation procedures in Ch 800 govern proceedings in Municipal Ct

a. Except Ch 938 governs taking and holding Juv in custody and issuing summons to Juv's parent, guardian, or legal custodian

§ 938.237

3) Procedures in Ch 938 govern proceedings in Juv Ct

a. See **Sec. C.** below for procedure

§ 938.17(2)(b)

C. If there is NOT a Municipal Ct and Juv is 12 or older (Does not apply to truancy. See Sec. 8 *infra*)

1) Law enforcement may

§ 938.17(2)(b)1.
§ 938.237

a. Issue citation directing Juv to

- Appear in Juv Ct, or
- Make a deposit or stipulation and deposit in lieu of appearance

§ 938.17(2)(b)2.
§ 938.125

b. Refer to Juv Ct intake worker for determination regarding filing of civil law or ordinance petition

§ 938.17(2)(c)

2) If citation is issued, issuing agency must

a. Notify parent or guardian within 7 days

b. Send copy to intake worker for informational purposes only when

- Juv is 12 to 15 years old, and

§ 125.07(4)(a) or (b)
§ 125.085(3)(b)
§ 125.09(2)
§ 961.573(2), § 961.574(2)
§ 961.575(2)

- Violated a drinking or drug paraphernalia ordinance

§ 938.237(1), (2)

3) Citation forms and procedures for issuing and filing citations may be defined by other statutory sections

a. Fishing and hunting violations, Ch 29

b. ATV, utility terrain vehicle, and limited-use off-highway motorcycle violations, Ch 23

c. Firearm violations, Ch 167

d. Boating regulations, Ch 30

e. Snowmobile violations, Ch 350

§ 66.0113

f. Municipal law, Ch 66

§ 938.237(2)
§ 800.01–.035

4) Municipal Ct procedure, Ch 800, used for stipulation and deposit

§ 938.237(2)

5) Ch 938 governs

§ 938.19(1)(d)8.

a. Taking and holding in custody

St v JFF (In Int of JFF)
164 Wis. 2d 10 (CA 1991)

- Municipal ordinance that is not "punishable by forfeiture" does not authorize Juv to be taken into custody for violation of that ordinance

§ 938.37(3)

b. Costs, fees, and surcharges

- Cts of civil and criminal jurisdiction exercising jurisdiction under § 938.17 may assess same costs, fees, and surcharges imposed under Ch 814 against Juvs as they may assess against adults, except witness fees may not be charged to Juv

§ 938.28

c. Issuance of capias instead of arrest warrant

§ 938.237(3)

6) If citation issued and Juv does not submit deposit or stipulation and deposit or no forfeiture authorized

a. Juv must appear for plea hearing at date, time, and place for Ct appearance specified on citation

§ 938.237(3)

7) If citation issued and Juv does not submit stipulation and deposit and does not appear for plea hearing on return date or Ct refuses to accept deposit without stipulation

§ 938.125

a. Juv may be summoned to appear and Juv Ct procedures apply as if civil law or ordinance petition were filed

§ 938.237(3)

- EXCEPT citation is not subject to screening by Juv Ct intake worker

§ 938.28

b. If Juv fails to appear in response to summons, Ct may issue capias to be served while Ct is in session

§ 938.19(1)(d)8.
§ 938.21(2), (3)

- Juv may not be held in custody

§ 938.125

D. If Juv is under age 12, law enforcement

§ 938.17(2)

1) May not issue a citation to Municipal or Juv Ct

a. EXCEPT for truancy

2) May refer to Juv Ct intake worker for determination regarding filing of civil law or ordinance petition

a. If truancy alleged, may refer for filing of petition under § 938.13(6) (See **JV 2**)

§ 938.30

4. Juvenile Court Plea Hearing on Petition or Citation When Deposit or Stipulation and Deposit Not Submitted

A. See JV 6, Plea Hearing

§ 938.30(1)

B. Time periods

1) Must be held within 30 days after filing of petition or issuance of citation for Juv not in secure custody (except as provided in § 938.299(10))

§ 938.315

2) Delays, continuances, and extensions may be granted by Ct for good cause in open Ct or during telephone conference on the record

§ 938.315(3)

3) Failure to act within time periods in Ch 938 does not deprive Ct of personal or subject-matter jurisdiction or of competency to exercise jurisdiction. While assuring Juv's safety, Ct may grant a continuance, dismiss with or without prejudice, or grant any other appropriate relief

C. Right to counsel or GAL

§ 938.23

1) Juv and parent do not have statutory right to provided or appointed counsel (except pursuant to § 938.23(2g) in certain JIPS cases involving out-of-home placement of Indian Juv)

§ 938.23(3)

2) At any time, upon request or its own motion, Ct may appoint

§ 938.235(1)(a)

a. GAL for Juv or any party

§ 938.23(4)

b. Counsel for Juv or any party unless choice is to retain counsel of own choosing

§ 938.23(4)

3) Reimbursement for counsel must be in manner suitable to Ct regardless of party's ability to pay

§ 757.69(1)(g)10., 13.

D. Plea hearing may be held by Judge or CCC

E. Next hearing must be scheduled

§ 938.30(6)

1) If petition not contested, Ct must schedule dispositional hearing

   a. Within 30 days after plea hearing for Juv not in secure custody (subject to § 938.299(10))

   b. Ct may proceed immediately with dispositional hearing if all parties consent (subject to § 938.299(10))

2) If citation not contested, Ct may proceed immediately to enter dispositional order

§ 938.30(7)

3) If petition or citation contested, Ct must schedule fact-finding hearing

   a. Within 30 days after plea hearing for Juv not in secure custody (subject to § 938.299(10))

5. Juvenile Court Fact-Finding Hearing on Contested Petition or Citation

A. See JV 7, Fact-Finding Hearing

§ 938.30(7)

B. Time periods

1) Within 30 days after plea hearing for Juv not in secure custody (subject to § 938.299(10))

§ 938.315

2) Delays, continuances, and extensions may be granted by Ct for good cause in open Ct or during telephone conference on the record

§ 938.315(3)

3) Failure to act within time periods in Ch 938 does not deprive Ct of personal or subject-matter jurisdiction or of competency to exercise jurisdiction. While assuring Juv's safety, Ct may grant a continuance, dismiss with or without prejudice, or grant any other appropriate relief

§ 938.31(1)

C. Purpose of hearing to determine whether allegations of civil law or ordinance citation proved by clear and convincing evidence

D. Right to counsel or GAL

§ 938.23

1) Juv and parent do not have statutory right to provided or appointed counsel. See **Sec. 4.C.**, above

§ 938.31(1), (4), § 938.125

E. Findings of fact and conclusions of law

1) Ct must make determination of facts

§ 757.69(1)(g)13.

a. CCC may conduct contested fact-finding

F. Disposition at close of hearing

§ 938.31(2)

1) If allegations not proved, Ct must dismiss with prejudice

§ 938.31(7)

2) If allegations proved

a. Schedule dispositional hearing within 30 days after fact-finding hearing if Juv not in secure custody (subject to § 938.299(10))

b. May immediately proceed with dispositional hearing if all parties consent (subject to § 938.299(10))

§ 938.343
RMC Form JD-1747

6. Juvenile Court Dispositions for Civil Law or Ordinance Violations

A. Does not include drinking, drug paraphernalia, truancy violations

§ 757.69(1)(g)13.

B. Ct or CCC may impose one or more of the following dispositions

§ 938.343(1)

1) Counsel Juv, parent, or guardian

§ 938.343(2)

2) Impose forfeiture not to exceed maximum forfeiture that may be imposed on adult for committing violation

a. Include finding Juv alone is financially able to pay

b. Must allow up to 12 months for payment

c. If violation only applicable to person under 18, maximum forfeiture is $50

§ 938.34(2m)
RMC Form JD-1751

3) Order Juv placed in Teen Ct Program if all following conditions apply

a. Chief Judge of district has approved program

b. Ct determines that program will likely benefit Juv and community

c. Juv admits or pleads no contest in open Ct, in presence of Juv's parents, guardian or legal custodian, to allegations that Juv violated civil law or ordinance

d. Juv has not successfully participated in a Teen Ct Program during 2 years before date of alleged civil law or ordinance violation

§ 938.343(3), § 938.34(5g)

4) Order Juv to participate in supervised work program

§ 938.343(3m)

5) Order Juv to report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming of center

a. After school

b. In evening

c. On weekends

d. On other nonschool days, or

e. At any other time Juv not under immediate adult supervision

§ 938.343(4)

6) Order Juv to make reasonable restitution or repair

a. May be ordered if violation resulted in property damage or physical injury (excluding pain and suffering) and Ct considers it beneficial to well-being and behavior of Juv

St v BS (In Int of BS)
133 Wis. 2d 136
(CA 1986)

- Damage to property does not include restitution for lost wages

b. Order must include finding that Juv alone is financially able to pay or physically able to perform services

c. May allow up to 12 months to pay

d. If Juv objects to amount of damage claimed, must hold hearing on damages before restitution is ordered

e. Any recovery to be reduced by amount recovered under § 938.45(1r)(a)

§ 938.343(5), § 30.74(1)

7) If violation related to unsafe use of boat, order Juv to attend boating safety course

a. If Juv has valid boating safety certificate, Ct shall revoke certificate and order Juv to obtain another boating safety certificate

§ 938.343(6), Ch 29

8) If fish or game violation, suspend fish or game license(s) of Juv for up to one year or until Juv is 18 whichever occurs first

§ 938.343(7), § 29.591

9) If violation related to unsafe use of firearms, order Juv to attend hunter education program

§ 938.343(8), § 350.055

10) If violation concerning use of snowmobiles, order Juv to attend snowmobile safety course

§ 938.343(9), § 23.33

11) If violation concerning use of ATV or utility terrain vehicle, order Juv to attend ATV or utility terrain vehicle safety course

§ 938.343(9m), § 23.335

12) If violation concerning use of off-highway motorcycle, then order Juv to attend off-highway motorcycle safety certification program

§ 938.343(10)

13) If violation related to use or abuse of alcohol beverages or controlled substances, order Juv to do any of following

a. Submit to AODA assessment conducted by approved treatment facility

- Order must specify date by which assessment to be completed

b. Participate in outpatient AODA treatment program if assessment recommends treatment

c. Participate in Ct-approved AODA education program

§ 895.035(2m)(a)

C. If Juv fails to pay restitution

1) If the Juv or parent with custody fails to pay restitution ordered by Ct assigned under Chs 48 and 938 or a Municipal Ct or if it appears likely the Juv or parent will not pay restitution, the victim, victim's insurer, or the representative of public interest under § 938.09 or the agency may

a. Petition Ct assigned under Chs 48 and 938 to order amount of restitution unpaid by Juv or parent be entered as a judgment against Juv and custodial parent and in favor of victim, victim's insurer, or both

b. Petition may be filed after expiration of dispositional order or sentence, but no later than one year after expiration of dispositional order or sentence or any extension

§ 895.035(2m)(bm)

c. Before entering order, Ct shall give Juv and parent notice of intent to issue order and opportunity to be heard regarding order

- Juv and parent may present evidence as to amount of restitution unpaid, but not as to amount originally ordered
- Juv and parent may present evidence as to reason for failure to pay and ability of Juv and parent to pay
- In considering ability of Juv or parent to pay, Ct may consider assets, as well as income, of Juv or parent and may consider future ability of Juv or parent to pay within 20 years under § 893.40

§ 895.035(4)

- Except for recovery under § 895.035(4a) by school board or governing body of private school or for recovery for retail theft under § 943.51, maximum recovery from any parent or parents may not exceed $5,000 resulting from any one act of Juv

NEM v Strigel
208 Wis. 2d 1 (1997)

- Factors distinguishing one act from multiple acts are whether a sufficient period of time separates the conduct, whether conduct occurred at different locations, and whether there is a distinct difference in nature of the conduct
- Individual damage determination for each act not required in cases involving improper sexual contact, if damages are primarily psychological and emotional

d. Ct may take judicial notice of any deferred prosecution agreement, consent decree, dispositional order, sentence, extension of a consent decree, dispositional order or sentence, or any other finding or order in records of Juv maintained in that Ct or the Municipal Ct

e. Juv and parent may retain counsel of own choosing but Juv or parent has no right to appointed counsel

§ 895.035(2m)(c)

f. In lieu of entering a judgment for failure to pay restitution, Juv or parent may be ordered to perform community service work for a public agency or nonprofit charitable organization designated by Ct ONLY if agreed to by public agency or nonprofit charitable organization and by person to whom restitution is owed

- Number of hours of community service may not exceed number determined by dividing amount owed by minimum wage established for adults in nonagriculture, nontipped employment under § 104.035(1)

- Ct shall ensure Juv or parent is provided with written statement of terms and conditions of community service order and that community service order is monitored

§ 938.343(2)

D. If Juv fails to pay forfeiture

1) May NOT impose jail sentence

Ch 29

2) May suspend fish and game license for not more than 2 years

a. Must immediately take possession of suspended license

- Forward it to issuing Dept with notice of suspension

- Clearly state suspension is for failure to pay Ct-ordered forfeiture

b. If paid within the period of suspension, Ct to immediately notify Dept to return license to Juv

§ 340.01(40)

3) May suspend operating privilege for not more than 2 years

§ 895.035(2m)(b)

4) If Juv or parent with custody fails to pay forfeiture ordered by Ct under Chs 48 and 938 or Criminal or Municipal Ct or it appears likely Juv or parent will not pay, representative of the public interest under § 938.09, the agency, or law enforcement agency that issued citation may follow same procedure outlined under **Sec. C.**1) above for failure to pay restitution

a. Judgment entered in favor of Cty or appropriate municipality

§ 938.355(6)(a)3.

E. If Juv violates conditions under § 938.355(2)(b)7., Ct may impose any of sanctions under § 938.355(6)(d) (but Ct CANNOT impose a sanction on Juv who is subject to order that terminates when Juv attains 21 years of age)

FT v St (Int of FT)
150 Wis. 2d 216

(CA 1989)

1) ONLY if, at dispositional hearing, Ct

a. Explained conditions to Juv AND

b. Informed Juv of possible sanctions for violation AND

c. Order contained statement listing conditions

d. Or, if before violation Juv acknowledged in writing that s/he read or had read to him/her those conditions and possible sanctions and that s/he understood

St v Eugene W
(Int of Eugene W)
2002 WI App 54
251 Wis. 2d 259

e. Juv must have ability to understand conditions of dispositional order and possible sanctions; if Juv raises issue, burden on State to establish by clear and convincing evidence that Juv has ability to understand

§ 938.355(6)(d)

F. Possible sanctions

St v AA (In Int of AA)
2020 WI App 11
391 Wis. 2d 416

1) Place Juv in Juv detention facility or Juv portion of Cty jail that meets standards or in place of nonsecure custody for up to 10 days and the provision of educational services consistent with his or her current course of study during period of placement. "Day" means a calendar day and not a series of hours

a. Juv shall be given credit granted against period of detention or nonsecure custody imposed for all time spent in secure detention in connection with course of conduct for which the detention or nonsecure custody was imposed

2) Suspend or limit use of Juv's operating privilege under § 340.01(40) or any approval issued under Ch 29 for period not more than 3 years

a. If Ct suspends Juv's approval issued under Ch 29, it must immediately take possession of the suspended approval and forward it to issuing Dept, together with notice of suspension. If Ct suspends Juv's license under Ch 343, Clerk of Ct may take possession of license and, if it does so, Ct must destroy the license

3) Detain Juv at home or current residence for period of not more than 30 days under rules of supervision specified in order. Order may require electronic monitoring

4) Order Juv to perform not more than 25 hours of uncompensated community service work in supervised work program

5) Order Juv to participate after school, in the evening, on weekends, on other nonschool days, or at any other time that the Juv is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a Youth Report Center

§ 938.355(6)(b)

G. Motion for imposition of sanction

1) May be brought by

a. Primary person or agency responsible for services

b. DA or Corp Counsel

c. Ct that entered order. But if Ct initiates motion, then that Ct is disqualified from holding hearing

§ 938.355(6)(an)

d. Municipal Ct may petition Ct to order placement in Juv detention facility or home detention with electronic monitoring as specified in § 938.355(6)(d)1. or 3., if Juv who has violated municipal ordinance violates a condition of municipal dispositional order and if

- At time of judgment, Municipal Ct explained conditions to Juv and informed Juv of possible sanctions or
- If before violation Juv acknowledged in writing that s/he read or had read to him/her conditions and sanctions and that s/he understood

§ 938.355(6)(an)2.

- If Ct imposes sanction requested by municipality, Ct shall order municipality to pay cost of providing sanction

2) Notice of motion given to

§ 938.355(6)(b)

a. Juv, GAL, counsel

b. Parent

c. Guardian

d. Legal custodian

e. All parties present at original dispositional hearing

§ 938.355(6)(bm)

f. Indian Juv's parent, Indian custodian, and tribe, under § 938.028(4)(a)

§ 938.355(6)(c)

H. Ct must hold hearing before imposing sanction

§ 938.355(6)(d)

1) Burden of proof at sanction hearing is preponderance of the evidence (But see § 938.355(6)(cr) if case involves Indian Juv)

§ 938.299

I. Hearing procedure

§ 938.23(1m)(am)
§ 938.355(6)(c)

1) Juv subject to sanction has right to counsel at hearing

2) Juv may present evidence

St v BS (In Int of BS)
162 Wis. 2d 378
(CA 1991)

3) Sanctions in § 938.355(6) are not punitive contempt requiring same due process granted adults

a. Statutory procedure provides adequate due process

b. Sanctions not punitive, but designed to protect the Juv

§ 938.299(4)(a), (b)

4) Neither common law nor statutory rules of evidence are binding at any postdispositional hearing

§ 346.63(2m)

J. When Juv violates underage drinking and driving ("absolute sobriety") law or ordinance

§ 346.65(2q)

1) Mandatory $200 forfeiture

§ 343.30(1p)

2) Mandatory 3-month suspension of operating privilege

§ 346.65(2q)
§ 343.30(1p)

3) If there was a minor passenger under 16 at time of violation, mandatory $400 forfeiture and mandatory 6-month suspension

§ 938.344

7. Juvenile Court Dispositions for Violations of Drinking, Drug Paraphernalia Law

§ 938.344(2)
§ 125.07(4)(b)
§ 125.09(2)

A. Possession or consumption of alcoholic beverage

1) Ct must impose one or more of following penalties

§ 938.344(2)(a)

a. First violation

- Forfeiture up to $50

§ 343.30(6)(b)1.

- Suspension of operating privilege for 30–90 days

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2)(b)

b. Second violation within 12 months

- Forfeiture up to $100, or

§ 938.34(5g)

- Participation in supervised work program

§ 343.30(6)(b)2.

- In addition, Juv's operating privilege may be suspended for not more than 1 year—except, if violation involved a motor vehicle, Juv's operating privilege shall be suspended for not more than 1 year

§ 938.344(2)(c)

c. Third violation within 12 months

- Forfeiture up to $500, or

§ 938.34(5g)

- Participation in supervised work program

§ 343.30(6)(b)3.

- In addition, Juv's operating privilege may be suspended for not more than 2 years—except if violation involved a motor vehicle Juv's operating privilege shall be suspended for not more than 2 years

St v RB (*Int of RB*)
108 Wis. 2d 494
(CA 1982)

2) Constructive possession of alcohol by Juv

a. Juv who attends beer party, knows beer is available, but does not drink beer cannot be found in possession of alcohol

- Unless from surrounding facts and circumstances, aided by reasonable inferences, finding can be made that Juv intended to exercise control over the beer

§ 938.344(2b)
§ 125.07(4)(a)

B. Procuring or attempting to procure alcoholic beverage

1) Ct must impose one or more of following penalties

§ 938.344(2b)(a)

a. First violation

- Forfeiture not less than $250 nor more than $500

§ 343.30(6)(b)1.

- Suspension of operating privilege for 30–90 days, or

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2b)(b)

b. Second violation within 12 months

- Forfeiture not less than $300 nor more than $500, or

§ 938.34(5g)

- Participation in supervised work program

§ 343.30(6)(b)2.

- In addition, Juv's operating privilege may be suspended for not more than 1 year—except, if violation involves a motor vehicle, Juv's operating privilege shall be suspended for not more than 1 year

§ 938.344(2b)(c)

c. Third violation within 12 months

- Forfeiture of $500

§ 938.34(5g)

- Participation in supervised work program

§ 343.30(6)(b)3.

- In addition, Juv's operating privilege may be suspended for not more than 2 years—except, if violation involved a motor vehicle, Juv's operating privilege shall be suspended for not more than 2 years

§ 938.344(2d)
§ 125.085(3)(b)

C. False identification violations

1) Ct must impose one or more of following penalties

§ 938.344(2d)(a)

a. First violation

- Forfeiture not less than $100 nor more than $500

§ 343.30(6)(b)1.

- Suspension of operating privilege 30–90 days

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2d)(b)

b. Second violation within 12 months

- Forfeiture up not less than $300 nor more than $500

§ 343.30(6)(b)2.

- Suspension of operating privilege for up to 1 year

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2d)(c)

c. Third violation within 12 months

- Forfeiture of $500

§ 343.30(6)(b)3.

- Suspension of operating privilege for up to 2 years

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2e)
§ 961.573(2)
§ 961.574(2), § 961.575(2)

D. Possession of drug paraphernalia—applies to persons under age 17

1) Ct must suspend Juv's operating privilege for 6 months to 5 years, and

a. If Juv's license or operating privilege is suspended or Juv does not possess a license, suspension is effective on date on which Juv is first eligible for issuance or reinstatement of license

2) Ct must impose one or a combination of following penalties

§ 938.344(2e)(a)1.

a. First violation

- Forfeiture up to $50

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2e)(a)2.

b. Second violation within 12 months

- Forfeiture up to $100

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2e)(a)3.

c. Third or subsequent violation within 12 months

- Forfeiture up to $500

§ 938.34(5g)

- Participation in supervised work program

§ 938.344(2g)(a)

E. After ordering penalty under Secs. A., B., C., or D. above, Ct may enter additional order staying execution of order and suspending or modifying penalty imposed

1) Juv must agree

2) New order shall require Juv to do any of the following

§ 938.344(2g)(a)1.

a. Submit to AODA assessment conducted by approved treatment facility

- Order must specify date by which assessment to be completed

§ 938.344(2g)(a)2.

b. Participate in outpatient AODA treatment program

§ 938.344(2g)(a)3.

c. Participate in Ct-approved AODA education program

§ 938.344(2g)(a)4.

d. Order Juv placed in Teen Ct Program if all of following conditions apply

- Chief Judge of district has approved program
- Ct determines that program will likely benefit Juv and community
- Juv admits or pleads no contest in open Ct, in presence of Juv's parent, guardian, or legal custodian
- Juv has not successfully participated in a Teen Ct Program during 2 years before date of alleged delinquent act

§ 938.344(2g)(a)5.

e. Order Juv to report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming of center

- After school
- In evening
- On weekends
- On other nonschool days, or
- At any other time Juv not under immediate adult supervision

§ 938.344(2g)(b)

3) If facility notifies primary agency that Juv had assessment and does not need treatment or education, Ct must notify Juv whether penalty to be reinstated

a. Juv must consent to facility's notification

b. If Juv under 12, parent must consent to facility's notification

§ 938.344(2g)(c)

4) If Juv completes AODA treatment or education program, facility or program to notify primary agency that Juv complied with order and Ct shall notify Juv whether or not penalty to be reinstated

a. Juv must consent to facility's notification

b. If Juv under 12, parent must consent to facility's notification

§ 938.344(2g)(d)

5) If facility or program notifies primary agency that Juv not participating in program or has not satisfactorily completed recommended AODA treatment program or education program, Ct must hold hearing to determine whether to impose penalties

§ 938.344(3)

F. If Juv alleged to have committed a drinking law violation is within 3 months of age 17

1) Juv Ct may on request of DA or own motion

a. Dismiss citation without prejudice, and

§ 125.07(4)

b. Refer matter to DA for adult prosecution

2) Juv entitled to hearing only on issue of age

§ 938.344(3)

3) Does NOT apply to violations of drug paraphernalia law or ordinance

§ 343.30(6)(c)

G. Suspension of operating privilege commences on date of disposition EXCEPT

§ 343.30(6)(d)
§ 343.07, § 343.08

1) If Juv does not hold valid license other than instructional or restricted permit, suspension commences

a. On date that Juv is eligible for issuance, renewal, or reinstatement of license, regardless of when Juv applies for license

§ 343.30(6)(a)
§ 346.63(2m)

2) Convictions for violation of "absolute sobriety" law for underage persons who drink and drive do not count in calculating prior alcohol law violations within 12-month period

§ 895.035(2m)(a)
RMC Form JD-1761

H. If Juv or parent with custody fails to pay forfeiture ordered by Ct assigned under Chs 48 and 938 or a Criminal or Municipal Ct or if it appears likely Juv or parent will not pay forfeiture, the representative of public interest under § 938.09 or the law enforcement agency that issued citation may

1) Petition Ct assigned under Chs 48 and 938 to order amount of forfeiture unpaid by Juv or parent entered as a judgment against Juv and custodial parent

2) Follow procedures outlined under **Sec. 6.C.**1) above

8. Truancy and School Dropout Ordinances

A. Definitions

§ 118.16(1)(c)

1) Truancy means any absence of part or all of one or more days from school during which school has not been notified of legal cause of absence by pupil's parent or guardian

§ 118.15

a. Compulsory school attendance applies to persons between the ages of 6 and 18

§ 118.16(1)(a)

2) A habitual truant is a pupil who is absent from school without an acceptable excuse for

§ 118.16(1m)

a. Part or all of 5 or more days on which school is held during a semester

§ 118.163(1)(d)

3) "Truant" means a pupil who is absent from school without an acceptable excuse under § 118.15 and § 118.16(4) for part or all of any day in which school is held during a school semester

§ 118.153(1)(b)

4) Dropout means child who ceased to attend school, does not attend public, private, or tribal school, technical college or home-based private education program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under § 118.15(1)(b)–(d) or (3)

B. Jurisdiction

§ 938.13(6), (6m)

1) Juv Ct has exclusive jurisdiction when Juv alleged to be in need of protection or services that can be ordered by Ct AND Juv is habitually truant from school or a school dropout

§ 938.125
§ 938.17(2)

2) Juv Ct and Municipal Ct have concurrent jurisdiction when Juv is alleged to have violated a truancy, habitual truancy, or school dropout ordinance, provided school attendance officer followed proper procedures

C. School attendance officer duties

§ 118.16(2)

1) To determine which pupils are absent and whether absence is excused

§ 118.16(1m)

a. Period during which pupil is absent from school because of suspension or expulsion under § 120.13 or § 119.25 is neither absence without acceptable excuse nor absence without legal cause

- Statute appears to overturn *St v Isaac JR (In Int of Isaac JR)*, 220 Wis. 2d 251 (CA 1998)

§ 118.16(5)

2) Provide evidence before any action brought against Juv or parents or guardians, that school personnel

a. Met with or have attempted to meet and received no response or were refused meeting with Juv's parents or guardians to discuss truancy

b. Provided an opportunity for educational counseling to consider curriculum modifications

c. Evaluated Juv to determine whether learning problems are cause of Juv's truancy, and if so, whether action taken to overcome the learning problem

- Juv need not be evaluated if previous tests administered indicate Juv performing at grade level

d. Evaluated Juv to determine whether social problems are cause of truancy, and if so, whether appropriate referrals made

§ 118.16(5m)

e. Paras. b., c., and d. above do not apply if school attendance officer provides evidence that appropriate school personnel were unable to carry out activity because of Juv's absences from school

§ 118.16(5m)

f. Para. a. does not apply if meeting under § 118.16(2)(cg)3. is not held within 10 days after date school notice sent to parent or guardian

D. Law enforcement officer duties if there is a Municipal Ct

§ 938.17(2)(a)3.

1) May issue a citation directing Juv to

a. Appear in Municipal Ct, or

b. Appear in Ct exercising jurisdiction under Ch 938

§ 938.13(6)

2) May refer to Juv Ct intake worker for determination whether petition should be filed under Ch 938 (See **JV 2**)

E. Law enforcement duties if there is NOT a Municipal Ct

§ 938.17(2)(b)1.

1) May issue a citation directing Juv to appear in Ct exercising jurisdiction under Ch 938

§ 938.17(2)(b)2.
§ 938.13(6)

2) May refer to Ct intake worker to determine whether petition should be filed under Ch 938 (See **JV 2**)

F. Disposition for truant

§ 118.163(1m)
§ 938.342(1d)

1) Ordinance prohibiting truancy must provide which of following dispositions are available

a. Order the person to attend school

b. Impose forfeiture of not more than $50 plus costs for a first violation, or a forfeiture of not more than $100 plus costs for any second or subsequent violation committed within 12 months of a previous violation, subject to § 938.37

- Maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester

- All or part of the forfeiture plus costs may be assessed against the person, parent or guardian, or both

c. Order Juv to report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming of center

- After school

- In evening

- On weekends

- On other nonschool days, or

- At any other time Juv not under immediate adult supervision

G. Disposition for habitual truant

§ 118.163(2)
§ 938.342(1g)

1) Ordinance prohibiting habitual truancy must provide which of following dispositions are available

§ 118.163(2)(a)
§ 938.342(1g)(a)

a. Suspend person's operating privilege for not less than 30 days nor more than one year

- No occupational license obtainable

§ 118.163(2)(b)
§ 938.34(5g)
§ 938.342(1g)(b)

b. Order person to participate in counseling, supervised work program or other community service work as described in § 938.34(5g). Costs may be assessed against person, parent or guardian, or both

§ 118.163(2)(c)
§ 938.342(1g)(c)

c. Order person to remain at home except when

- Attending religious worship
- Attending a school program
- Accompanied by parent or guardian

§ 118.163(2)(d)
§ 938.34(7d)
§ 938.342(1g)(d)

d. Order person to attend an educational program under § 938.34(7d)

§ 103.70, § 103.72
§ 118.163(2)(e)
§ 938.342(1g)(e)

e. Order DWD to revoke work permit

§ 118.163(2)(f)
§ 938.342(1g)(f)

f. Order person to be placed in Teen Ct Program if all of following conditions apply

- Chief Judge of district has approved program

- Ct determines program will likely benefit person and community

- Person admits or pleads no contest in open Ct, in presence of parent, guardian, or legal custodian

- Juv has not successfully participated in Teen Ct Program during 2 years before date of alleged municipal ordinance violation

§ 118.163(2)(g)
§ 938.342(1g)(g)

g. Order person to attend school

§ 118.163(2)(h)
§ 938.342(1g)(h)

h. Impose a forfeiture of not more than $500 plus costs, subject to § 938.37

- All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both

§ 118.163(2)(i)
§ 938.342(1g)(i)

i. Order the person to comply with any other reasonable conditions including

- Curfew

- Restrictions as to going to or remaining on specified premises

- Restrictions on associating with other Juvs or adults

§ 118.163(2)(j)
§ 938.342(1g)(j)

j. Place person under formal or informal supervision as described in § 938.34(2), for up to one year

§ 118.163(2)(L)
§ 938.342(1g)(k)

k. Report to Youth Report Center for participation in social, behavioral, academic, community service, and other programming

§ 118.163(2)(k)
§ 938.342(1m)(a)

l. If Ct finds a person habitually truant, Ct may, in addition to or instead of the dispositions in paras. a.–k. above, order

- Parent, guardian, or legal custodian to participate in counseling at own expense or to attend school with person, or both

§ 938.342(1m)(am)

m. Ct may order the person's parent or guardian to pay all or part of the costs of any program order under § 938.342(1g)(b) or to pay all or part of a forfeiture plus costs assessed under § 938.342(1g)(h)

§ 938.342(1m)(b)

n. No order to any parent, guardian, or legal custodian may be entered until parent, guardian, or legal custodian given an opportunity to be heard

- Notice to be served personally at least 10 days before the date of hearing
- Parent, guardian, or legal custodian may be represented by counsel and may produce and cross-examine witnesses
- Parent, guardian, or legal custodian who fails to comply with any order issued by the Ct under § 938.342(1m)(a) or (am) may be proceeded against for contempt of Ct

§ 938.342(1r)

H. If school attendance is a condition of truancy or habitual truancy order, order shall

1) Specify what constitutes a violation of condition

2) Direct school board or governing body of private school or request governing body of the tribal school in which Juv is enrolled to notify Ct or supervising agency within 5 days after any violation of condition

I. Disposition for school dropout

§ 938.342(2)
§ 118.163(2m)(a)

1) Municipality may enact ordinance permitting Ct to suspend operating privilege of person who is at least 16 years of age but less than 18 years of age and is dropout

2) Ct may suspend operating privilege until Juv attains age 18 (no occupational license obtainable)

3) If Ct finds suspension until age 18 would cause undue hardship to person or Juv's family, Ct may enter any of dispositions that Ct can impose for habitual truant under **Secs. G.1)**a.–k. above

J. See JV 11 for sanctions that may be imposed if person violates order

K. Parental Responsibility

§ 118.15(5)(a)

1) Parent or guardian who fails in responsibility to cause a child to attend school may be penalized as follows

a. For the first offense, by a fine of not more than $500 or imprisoned for not more than 30 days or both

b. For a second or subsequent offense, by a fine of not more than $1,000 or imprisonment for not more than 90 days or both

c. Ct may require the person to perform community service work in lieu of any penalties

d. Ct may order the person to participate in counseling at the person's own expense or to attend school with the child, or both

e. Action does not apply to a person who has under his or her control a child who has been sanctioned under § 49.26(1)(h) (Learnfare)

f. If Def proves that he or she is unable to comply with law because of the disobedience of the child

- Action to be dismissed
- Child referred to Ct assigned to exercise jurisdiction under Ch 48 or Ch 938

JV 11: POSTDISPOSITION

§ 48.355, § 48.357
§ 48.358, § 48.363
§ 48.365, § 48.366
§ 938.355, § 938.357
§ 938.358, § 938.363
§ 938.365

1. Right to Counsel or GAL—Change of Placement, Trial Reunification, Revision of Disposition, Extensions, and Sanctions

A. Child/Juv has right to counsel

§ 48.23(4), § 938.23(4)

1) If counsel required and it appears child/Juv cannot afford counsel or so indicates, see **JV 2**

§ 938.23(1m)(am)
§ 938.355(6)(a), (c)

2) Juv subject to sanction hearing

§ 48.366
(expired 6/30/96)

3) Person subject to extended Juv Ct jurisdiction

a. Counsel required at all proceedings

b. Counsel may be waived if

- Knowingly and voluntarily made

- Ct need not accept waiver

Recommendation

- Ct should not accept waiver

§ 938.23(1m)(ar)

4) Juv subject to change of placement to secured RCCCY or Juv correctional facility

§ 938.23(1m)(ar)

5) Juv subject to proceedings to revoke community supervision or aftercare supervision

§ 48.235(1)(a)
§ 938.235(1)(a)

6) Ct may appoint GAL in any appropriate matter

B. For parent's and other party's right to counsel, see JV 2

RMC Form JD-1766
RMC Form JD-1764
RMC Form JD-1801

2. General Hearing Procedures—Change of Placement, Trial Reunification, Revision of Disposition, and Extension

§ 757.69(1m)(d)

A. Hearing conducted by Judge not CCC

1) Except CCC may hold hearing

a. On revision of disposition for Juvs who violated a civil law or ordinance,

§ 757.69(1m)(g)

b. In uncontested delinquency, JIPS, CHIPS, and UCHIPS proceedings, but may not order SJO, correctional, or Type 2 RCCCY placement, or

c. As permitted under § 757.69(1)(g)6., 8., 9., and 15.

SCR 71.01

B. Ch

48 hearing must be recorded

§ 48.335(4)

1) On request unless good cause to contrary shown

a. May be held by telephone or live audiovisual means

b. Testimony may be received by telephone or live audiovisual means

2) Request and showing of good cause may be by telephone

§ 938.325

C. Ch

938 cases must be reported by a Ct reporter

1) Proceedings shall be provided to persons entitled to attend by telephone or live audiovisual means, unless good cause to the contrary is shown

2) Access shall be provided to persons entitled to attend by loudspeaker or live audiovisual means, or, upon request to the Ct, by telephone without charge

§ 48.299(4)(b)
§ 938.299(4)(b)

D. Common law and statutory rules of evidence not binding. Ct must

1) Admit testimony having reasonable probative value

2) Exclude immaterial, irrelevant, or unduly repetitious testimony

3) Give effect to rules of privilege recognized by law

4) Apply basic principles of relevancy, materiality, and probative value to proof of all questions of fact

5) Note in record objections to evidentiary offers and offers of proof of evidence not admitted

6) Ct may admit hearsay evidence if demonstrable circumstantial guarantees of trustworthiness

§ 48.299(3)

E. Child must be present unless

1) Ct finds it in best interests of child with counsel's and GAL's consent to exclude child temporarily from CHIPS hearing

2) Ct finds child under 7 years too young to comprehend hearing and in child's best interests to be excluded from entire hearing

§ 48.365(3)

3) Waived by child, counsel, or GAL for extension hearing

§ 938.365(3)

a. Juv, counsel, or GAL may waive Juv's appearance at extension hearing

§ 48.299(1), § 938.299(1)

F. If public hearing not demanded, general public excluded

§ 48.299(1)(a)
§ 938.299(1)(a)

1) Public hearing may be demanded by child/Juv, EM, or UC's GAL, but hearing may not be public if parent, guardian, EM, UC's GAL, or victim of alleged sexual assault objects

2) Persons who may be present

a. Parties

b. Counsel/GAL

c. CASA

§ 48.299(1)(ag)
§ 938.299(1)(ag)

d. Child's/Juv's foster parent or physical custodian, who may be excluded from portion of hearing dealing with sensitive personal information or if exclusion in child's/Juv's best interest

§ 938.299(1)(am)
But see Wis Const art 1,
§ 9m(2)(e)

e. Victim, victim's family member, and representative of victim's organization may attend any hearing for alleged act against victim, but may be excluded from portion of hearing dealing with sensitive personal information not directly related to alleged act

f. Witnesses

g. Anyone requested by party and approved by Ct

§ 48.299(1)(ag)
§ 938.299(1)(a)

h. Any other person Ct finds to have proper interest in case or work of Ct, including Attys and persons engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

§ 938.299(1)(a)

- Representative of news media who wishes to report news without revealing identity of Juv involved must be permitted to attend

§ 48.299(1)(b), Ch 785
§ 938.299(1)(b), (av)

3) Except as provided in § 48.375(7)(e), § 48.396, and § 938.396, or when a public hearing is held, anyone who divulges information that would identify child/Juv/EM or family subject to contempt of Ct

§ 938.299(1)(b)

a. Does not preclude a victim from commencing a civil action

G. In addition to provisions in Sec. F. above, the following may attend proceedings under Ch 938

§ 938.299(1)(ar)1.

1) General public may attend any hearing for Juv charged with violation

a. That would be a felony if committed by an adult, and Juv has prior adjudication of delinquency of record and unreversed

b. That is an SJO violation

- See **Appendix 1**, SJO Offenses, for list of violations

§ 938.299(1)(ar)2.

c. Judge shall exclude public if victim of sexual assault objects to public hearing and may do so during portion of hearing dealing with sensitive personal matters of Juv and family

H. Use of restraints (shackling)

§ 48.299(2m)
§ 938.299(2m)

Restraints may be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m) or § 938.299(2m). *See infra* **Appendix 13**

§ 48.299(6)
§ 938.299(6)

I. If man appears and alleges paternity, Ct shall refer matter to child support enforcement agency for determination of paternity in Family Ct

1) Proceedings may be stayed if specific findings made

§ 48.299(8), § 938.299(8)

2) Ct may order record of mother's testimony regarding paternity, which is admissible in Family Ct paternity action

Comment

3) It appears that putative father not entitled to participate as party until adjudicated father

Recommendation
Marinette Cty v Tammy C
(*In re TPR of Anthony C*)
219 Wis. 2d 206 (1998)

J. If child in out-of-home placement, oral and written TPR warnings should be given at all change of placement, revisions of disposition, and extension hearings

1) See **JV 13** for TPR grounds

§ 48.357(4d)(a)
§ 938.357(4d)(a)

K. Ct may not change placement to home of person convicted under § 940.01 or § 940.05 of homicide of parent of child/Juv if conviction has not been reversed, set aside, or vacated

§ 48.357(4d)(b)
§ 938.357(4d)(b)

1) Unless Ct determines by clear and convincing evidence that placement in best interest of child/Juv

§ 48.357(4d)(b)
§ 938.357(4d)(b)

2) Ct shall consider wishes of child/Juv in making determination

§ 48.357(4d)(am)
§ 938.357(4d)(am)

L. Ct shall change placement to out of home if parent in whose home child/Juv placed is convicted under § 940.01 or § 940.05 of homicide of other parent and conviction has not been reversed, set aside, or vacated

1) On petition of child/Juv, child's/Juv's counsel or GAL, guardian or legal custodian, person or agency primarily responsible for implementing dispositional order, or DA or Corp Counsel of Cty in which dispositional order entered, or on Ct's own motion and on notice to parent

2) Unless Ct determines by clear and convincing evidence that placement in best interests of child/Juv

3) Ct shall consider wishes of child/Juv in making determination

RMC Form JD-1790T
RMC Form JD-1792

3. Change in Existing Court-Ordered Out-of-Home Placement

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 48.357(1)(am)1g.
§ 938.357(1)(am)1g.

A. If child/Juv an Indian child/Juv who has been removed from home of parent or Indian custodian and if proposed change in placement would change Indian child's/Juv's placement from outside that home, notice shall also contain statement as to whether new placement is in compliance with order of placement preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b) and, if new placement is not in compliance with that order, specific information showing good cause, as described in § 48.028(7)(e)/ § 938.028(6)(d)

§ 938.538(5)(c)

B. Does not apply to Juvs in SJO program

§ 48.357, § 938.357

C. Must be made according to statutory change-of-placement procedures

Comment

1) If child/Juv/EM was NOT placed out of home in existing Ct order, initial out-of-home placement should follow procedures in **Sec. 4** below

§ 48.357(1)(a)
§ 938.357(1)(a)

D. Change requested by primary dispositional person or agency or prosecutor

1) May be requested whether or not change requested is authorized in dispositional order

§ 48.357(1)(am)1.a.
§ 938.357(1)(am)1.a.

2) Written notice

a. Must be sent to

- Child/Juv
- Child's/Juv's counsel or GAL
- Parent, foster parent or other physical guardian described in § 48.62(2), guardian, legal custodian, or CASA
- If child/Juv is Indian child/Juv who has been removed from home of parent or Indian custodian, to Indian custodian and tribe

§ 48.357(1)(am)1.b.

- If EM is a child, to UC's GAL
- If EM is adult, to AEM, the physical custodian of the AEM, and UC's GAL

§ 938.357(3)

- Proposed placement facility

§ 48.357(1)(am)1.c.
§ 938.357(1)(am)1.

b. Contents

- Name and address of new placement
- Reasons for change
- Statement why it is preferable to present placement
- Statement how it satisfies objectives of treatment plan or permanency plan ordered by Ct
- Whether the new placement is certified as a qualified residential treatment program under § 48.675

§ 48.357(1)(am)1g.
§ 938.357(1)(am)1g.

- If Indian child/Juv, statement that placement complies with § 48.028(7)/§ 938.028(6)

§ 48.357(1)(am)1.c.
§ 938.357(1)(am)1.

c. Person sending notice shall file notice with Ct same day notice is sent

§ 48.357(2), § 938.357(2)

E. Emergency placement change by primary dispositional person or agency or prosecutor

§ 48.357(2)(a)
§ 938.357(2)(a)

1) If emergency conditions necessitate immediate change in placement of child/Juv/EM

a. Primary dispositional person or agency

- May immediately remove child/Juv/EM to new placement whether or not authorized by dispositional order

- Need not give prior notice required above or the consent required under § 48.357(1)(am)2r. or § 938.357(1)(am)2r. for orders terminating when child/Juv attains 21 years of age

- Notice shall be sent within 48 hours to persons specified in § 48.357(1)(am)1./§ 938.357(1)(am)1.

2) Any party receiving notice of emergency change may demand hearing

§ 48.357(2)(c), § 48.345(3)
§ 938.357(2)(c)
§ 938.34(3)

3) Child/Juv may be placed in

§ 48.028(7)
§ 938.028(6)

a. If child/Juv is Indian child/Juv, a placement that complies with § 48.345(3m)/§ 938.345(1m)

b. Licensed public or private shelter care facility as transitional placement for not more than 20 days

c. Home of parent or other relative

- Except judge may not designate home of parent or other relative if parent or other relative convicted under § 940.01 or § 940.05 of homicide of other parent of child/Juv and conviction has not been reversed, set aside, or vacated unless

— Judge determines by clear and convincing evidence that placement would be in best interests of child/Juv

— Judge shall consider wishes of child/Juv in making determination

d. Home of person who is not required to be licensed if placement less than 30 days

- Except judge may not designate home of parent or other relative if parent or other relative convicted under § 940.01 or § 940.05 of homicide of other parent of child/Juv and conviction has not been reversed, set aside, or vacated unless

  — Judge determines by clear and convincing evidence that placement would be in best interests of child/Juv

  — Judge shall consider wishes of child/Juv in making determination

e. Foster home as defined in § 48.62 or similar out-of-state facility

f. Group home as defined in § 48.625 or similar out-of-state facility

g. Home of guardian under § 48.977(2)

§ 48.625(1m)

h. Group home or similar out-of-state facility if child/Juv at least 12, a custodial parent or EM, is receiving inadequate care, and is in need of safe and structured living arrangement

i. RCCCY as defined in § 48.60 or similar out-of-state facility

j. With a parent in a QRFTF or similar out-of-state facility, if child's permanency plan includes a recommendation under § 48.38(4)(em) before the placement is made

§ 938.34(3)(e)

k. Independent living situation (Juv only)

§ 938.34(3)(f)

l. Juv detention facility or place of nonsecure custody (Juv only)

§ 48.345(3)
§ 938.34(3)

4) Ct may not order out-of-home placement with persons who have certain criminal histories

§ 48.357(1)(a)
§ 938.357(1)(a)

F. Nonemergency placement change by primary dispositional person or agency or prosecutor, excluding orders terminating when child/Juv attains 21 years of age—*See* Sec. H., *infra*

1) May be made immediately

a. If authorized in dispositional order and notice given

§ 48.357(1)(am)2.
§ 938.357(1)(am)2.

- Person receiving notice, other than CASA, who objects to change may receive hearing if objection filed within 10 days after notice is sent and filed with the Ct

b. If not authorized in disposition but

§ 48.357(1)(am)2.
§ 938.357(1)(am)2.

- Parent, guardian or legal custodian, Indian custodian, AEM, physical custodian of AEM, UC's GAL, child/Juv age 12 or older, child's/Juv's counsel or GAL, and child's/Juv's tribe (if child/Juv is Indian child/Juv who has been removed from home of parent or Indian custodian) sign written waivers of objection

2) Except as provided in § 48.357(1)(am)2m. and 2r./§ 938.357(1)(am)2m. and 2r., placement changes CANNOT be made earlier than 10 days after notice sent and filed with the Ct

a. If not authorized in dispositional order, and

b. Waiver of objection not signed

§ 48.357(1)(a)
§ 938.357(1)(a)

G. Hearing when change by primary dispositional person or agency or prosecutor

1) NOT required

a. For placement changes authorized in dispositional order EXCEPT

§ 48.357(1)(am)2.
§ 938.357(1)(am)2.

- When objection filed by person who received notice (other than child's CASA) alleges new information available that affects advisability of Ct's dispositional order

b. When no person receiving notice (other than child's CASA) has filed objection with Ct within 10 days after notice is sent and filed with the Ct

§ 48.357(1)(am)2.
§ 938.357(1)(am)2.

2) Hearing required

a. For placement changes authorized in dispositional order when objection filed by person alleging new information available that affects advisability of Ct's dispositional order

b. For placement changes NOT authorized in dispositional order when any person, other than CASA, receiving notice files objection with Ct within 10 days after notice is sent and filed with the Ct

§ 48.357(1)(am)2.
§ 48.355(2)(b)2.
§ 938.357(1)(am)2.
§ 938.355(2)(b)2.

- Includes notification of specific foster placement when name unavailable at earlier hearing

§ 48.357(1)(am)2.
§ 938.357(1)(am)2.

c. At least 3 days' notice

§ 48.357(2r)
§ 938.357(2r)

3) If hearing held and change in placement would remove child/Juv from foster home or other placement with physical custodian described in § 48.62(2), foster parent or other physical custodian has right to make written or oral statement during hearing or to submit written statement before hearing relating to child/Juv and requested change

- Foster parent or other physical custodian is not a party, unless there is a basis other than notice and right to be heard

§ 48.64(4)(c)
Sallie T v Milwaukee Cty
(*In Int of Nadia S*)
219 Wis. 2d 296 (1998)
Tina B v Richard H
(In re Guardianship of
Elizabeth MH)
2014 WI App 123
359 Wis. 2d 204
Richard D v Rebecca G
(In Int of Caryn A-G)
228 Wis. 2d 658
(CA 1999)

4) However, if foster parent or relative petitions under § 48.64(4)(c), foster parent or relative may present relevant evidence

a. Any written or oral statement shall be made under oath or affirmation

§ 48.357(1)(am)2r.
§ 938.357(1)(am)2r.

H. Placement changes for orders terminating when child/Juv attains 21 years of age

1) Primary dispositional person or Agency, DA, or Corp Counsel, may request change ONLY IF:

a. Child/Juv, or child's/Juv's guardian on behalf of child/Juv, consents to the change in placement

2) Primary dispositional person or Agency, DA, or Corp Counsel shall send written notice of proposed change in placement to child/Juv, guardian of child/Juv, and any foster parent or other physical custodian described in § 48.62(2) of child/Juv

3) No hearing is required, and placement may be changed at any time after notice of proposed change in placement is sent to Ct

§ 48.357(2m)(a)
§ 938.357(2m)(a)

I. Change requested by others: child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, EM, UC's GAL, or any person or agency primarily bound by dispositional order, or on Ct's own motion (If in-home to out-of-home, see Sec. 4, *infra*)

1) Contents of request submitted to Ct

a. Name and address of new placement requested

b. New information available that affects advisability of current placement

c. If proposed change in placement would place child/Juv in RCCCY, group home, or shelter care facility certified under § 48.675 as qualified residential treatment program, the qualified individual shall conduct standardized assessment and submit recommendation pursuant to § 48.357(1)(am)1m./§ 938.357(1)(am)1m. to Ct and all persons required to receive notice upon filing the request, or if not available by that time, no later than 30 days after date placement was made

2) Hearing required

a. Unless written waivers of objection signed by

- Child/Juv
- Parent, guardian, or legal custodian
  - — Not CASA
- Indian custodian and tribe
- AND Ct approves

§ 48.357(2m)(b)
§ 938.357(2m)(b)

b. Ct must notify child/Juv, child's/Juv's counsel or GAL, parent, foster parent, guardian, legal custodian, or other physical custodian as described in § 48.62(2), CASA, person or agency primarily responsible for implementing dispositional order, DA or Corp counsel, and Indian custodian and tribe

- At least 3 days before hearing
- If CEM, must also notify UC's GAL
- If AEM, must only notify AEM and UC's GAL, person or agency primarily responsible for implementing the dispositional order, and the DA or Corp counsel
- Copy of request or proposal for change attached to notice

- If all parties consent, Ct may proceed immediately with hearing

Sallie T v Milwaukee Cty
(*In Int of Nadia S*)
219 Wis. 2d 296 (1998)
Richard D v Rebecca G
(In Int of Caryn A-G)
228 Wis. 2d 658
(CA 1999)

3) When parent requests return, Ct must determine whether return is in best interests of child

a. Parent's compliance with conditions of CHIPS dispositional order does not create presumption that it is in child's best interest to be returned to parent

b. Safety of child with biological parent not synonymous with best interest of child

§ 48.357(2r)
§ 938.357(2r)

4) If hearing held and change in placement would remove child/Juv from foster home or other placement with physical custodian described in § 48.62(2), foster parent or other physical custodian has right to make written or oral statement during hearing or to submit written statement before hearing relating to child/Juv and requested change

a. Foster parent or other physical custodian is not a party, unless there is a basis other than notice and right to be heard

5) For child/Juv under order terminating when child/Juv attains 21 years of age, see procedure set forth in **Sec. H.** above

§ 938.357(3)
See DOC Memo #21-03
(Dec 10, 2021)
https://doc.wi.gov/Documents/AboutDOC/JuvenileCorrections/DJCAdminMemo2103.pdf

J. Proposed change of placement involving placing Juv in Juv correctional facility or secured RCCCY

1) Hearing before Judge required for change of placement to DOC

a. Unless waived by Juv, parent, guardian, and legal custodian

b. Juv entitled to counsel

c. Any party opposing or favoring new placement may present relevant evidence and cross-examine witnesses

§ 938.34(4m)

d. Record must reflect finding that

- Juv was found delinquent for act for which adult could receive sentence of 6 months or longer

- Juv is danger to public and in need of restrictive custodial treatment

BM v St (In Int of BM)
101 Wis. 2d 12 (1981)

— Danger to public includes actual or potential threat of physical harm to any person or damage to property

2) Written notice

a. Must be sent to

- Juv

§ 938.357(1)(am)1., (3)

- Parent, foster parent or other physical custodian as described in § 48.62(2), guardian, legal custodian, and Indian custodian or tribe

§ 938.357(3)

- Proposed placement facility

b. Contents

- Name and address of new placement
- Reasons for change
- Statement why it is preferable to present placement
- Statement how it satisfies objectives of treatment plan or permanency plan ordered by Ct
- Whether the new placement is certified as a qualified residential treatment program under § 48.675

§ 938.357(4), § 938.50

3) Once placed with DOC, then Dept

a. Must examine Juv to determine best placement for Juv and protection of public

b. May place Juv in Juv correctional facility or secured RCCCY

c. May place Juv on community supervision or aftercare supervision with appropriate notice as provided under para. d. below

- Immediately, or

- After period of placement in Juv correctional facility or a secured RCCCY

§ 938.51(1)

d. At least 15 days before release from Juv correctional facility or secured RCCCY, or release from supervision, shall send written notice of change to

§ 938.357(4)(am)

- Parent, guardian, legal custodian, or Cty Dept designated under § 938.34(4n), if any, and committing Ct, and

§ 938.51(1)(a)

- Local law enforcement, school district, and Cty Depts

§ 938.51(1)(b)

- Victim entitled to notice under certain conditions. See **JV 12** for victim's rights

§ 938.357(4)(as)

4) When placed under supervision of Cty Dept, then Dept

a. May place Juv in SRCCCY

b. May place Juv on aftercare supervision with appropriate notice as provided under para. c. below

- Immediately, or

- After period of placement in SRCCCY

c. Cty Dept shall send written notice of change to parent, guardian, legal custodian, and committing Ct

d. Cty Dept responsible for decisions regarding the release of Juv under its supervision

§ 48.357(6)(b)
§ 938.357(6)(b)

K. If change of placement from out-of-home to in-home, expiration date must be reduced to no longer than one year after change-in-placement order is granted

§ 48.355(2e)(b)
§ 938.355(2e)(b)

L. Permanency plan must be revised to conform to order changing placement (See JV 9 for permanency planning)

RMC Form JD-1789T

4. Change from In-Home to Out-of-Home Placement

Recommendation

A. Treat as initial disposition for out-of-home placement

1) A "contrary to the welfare of the child" finding must be made in first Ct hearing that sanctions, even temporarily, removal of child from home

§ 48.357(2v)(a)
§ 938.357(2v)(a)

a. Ct must conclude that continuing child/Juv in parental home would be contrary to child's/Juv's welfare

b. Unless reasonable efforts finding not required for removal, Ct must find agency primarily responsible for implementing dispositional order has made reasonable efforts to prevent removal

§ 48.357(2v)(b)
§ 938.357(2v)(b)

c. Determination must be made on case-by-case (child-/Juv-specific) basis and explicitly stated in Ct order

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 48.357, § 938.357

B. Must be made according to statutory change procedures

§ 48.357(1)(c)1.
§ 938.357(1)(c)1.

C. Change requested by primary dispositional person or agency or prosecutor

1) May be requested whether or not change requested is authorized in dispositional order

§ 48.357(1)(c)2.
§ 938.357(1)(c)2.

2) At least 3 days before hearing, Ct to provide written notice with copy of request

a. Must be sent to

- Child/Juv
- Child's/Juv's counsel or GAL
- Parent, guardian, legal custodian, CASA, and person or agency primarily responsible for implementing dispositional order
- DA or Corp counsel
- Foster parent or other physical custodian
- Indian custodian and tribe

§ 48.357(1)(c)1.
§ 938.357(1)(c)1.

b. Contents

- Name and address of proposed placement
- Reasons for change
- Statement why it is preferable to present placement
- Statement how it satisfies objectives of treatment plan or permanency plan ordered by Ct
- Specific information showing continued placement in home would be contrary to child's/Juv's welfare and, unless circumstances under § 48.355(2d)(b)1.–5. or § 938.355(2d)(b)1.–4. apply, specific information that agency has made reasonable efforts to prevent removal from home
- If proposed change in placement would place child/Juv in RCCCY, group home, or shelter care facility certified under § 48.675 as qualified residential treatment program, the qualified individual shall conduct standardized assessment and submit recommendation pursuant to § 48.357(1)(am)1m./§ 938.357(1)(am)1m. to Ct and all persons required to receive notice upon filing the request, or if not available by that time, no later than 30 days after date placement was made

§ 48.357(2m)(a)
§ 938.357(2m)(a)

D. Change requested by others: child/Juv, child's/Juv's counsel or GAL, parent, guardian, legal custodian, Indian custodian, EM, or UC's GAL, or on Ct's own motion

1) Contents of request submitted to Ct

a. Name and address of new placement requested

b. New information available that affects advisability of current placement

c. Specific information showing continued placement in home contrary to welfare of child/Juv and, unless circumstances under § 48.355(2d)(b)1.–5. or § 938.355(2d)(b)1.–4. apply, specific information showing agency has made reasonable efforts to prevent removal from home

d. If proposed change in placement would place child/Juv in RCCCY, group home, or shelter care facility certified under § 48.675 as qualified residential treatment program, the qualified individual shall conduct standardized assessment and submit recommendation pursuant to § 48.357(1)(am)1m./§ 938.357(1)(am)1m. to Ct and all persons required to receive notice upon filing the request, or if not available by that time, no later than 30 days after date placement was made

§ 48.357(2m)(b)
§ 938.357(2m)(b)
§ 48.357(1)(c)2.
§ 938.357(1)(c)2.

E. Hearing required. These procedures do not apply to orders that terminate when child/Juv attains 21 years of

age. For those orders, see procedure outlined in Sec. 3.H., *supra,* and see § 48.357(2m)(bv)/§ 938.357(2m)(bv)

1) Ct must notify child/Juv, child's/Juv's counsel or GAL, parent, foster parent or other physical custodian described in § 48.62(2), guardian, legal custodian, CASA, person or agency primarily responsible for implementing dispositional order, DA or Corp counsel, and Indian custodian and tribe

   a. If CEM, must also notify UC's GAL

   b. If AEM, must also notify AEM and UC's GAL

   c. At least 3 days before hearing

   d. Copy of request or proposal for change attached to notice

   e. If all parties consent, Ct may proceed immediately with hearing, subject to §§ 48.357(2m)(br)/§ 938.357(2m)(br) in case of Indian child/Juv

§ 938.357(3)

F. Proposed change of placement of Juv to Juv correction facility or secured RCCCY

1) Hearing required for change of placement to Juv correctional facility or secured RCCCY, unless waived

2) See procedure under **Sec. 3.J.** above

3) Written notice

   a. Must be sent to

      - Juv

§ 938.357(1)(am)1.

      - Parent, foster parent or other physical custodian described in § 48.62(2), guardian and legal custodian, and Indian custodian and tribe

§ 938.357(3)

      - Proposed placement facility

   b. Contents

      - Name and address of new placement

      - Reasons for change

- Statement why it is preferable to present placement

- Statement how it satisfies objectives of treatment plan or permanency plan ordered by Ct

§ 938.357(4), § 938.50

4) DOC

a. Must examine Juv to determine best placement for Juv and protection of public

b. May place Juv in Juv correctional facility or secured RCCCY

§ 938.357(4g)

c. May place Juv on community supervision or aftercare

.

- Immediately, or

- After period of placement in Juv correctional facility or secured RCCCY

§ 48.357(2v)(a)1.
§ 938.357(2v)(a)1.
see also
§ 48.357(1)(am)3., (2m)(c)
§ 938.357(1)(am)3.,
(2m)(c)

G. Findings and Order

1) Must make findings that continued placement in home would be contrary to child's/Juv's welfare, and that there have been reasonable efforts to prevent removal from home (unless not required under § 48.355(2d)(b)1.–5. or § 938.355(2d)(b)1.–4.)

a. Findings must be made on case-by-case basis and be explicitly stated in Ct order

- General references to state statutes not sufficient to meet documentation requirements

- Amended order that retroactively corrects earlier order that does not comply is not sufficient

- See exceptions to requirements of reasonable efforts to maintain family unit and to prevent unnecessary removals or to effect safe reunification of child and family at **JV 9, ASFA, Sec. 2**, and in para. b. below

§ 48.357(2v)(a)3.
§ 938.357(2v)(a)3.

NOTE: The procedure under § 48.357(2v)/§ 938.357(2v) does not apply to orders that terminate when child/Juv attains 21 years of age.

§ 48.355(2d)
§ 938.355(2d)

b. Reasonable efforts not required if Ct finds any of following

- Parent has subjected child/Juv to aggravated circumstances defined in § 48.355(2d)(a)1. or § 938.355(2d)(a)1.

- Parent has committed, has aided or abetted commission of, or has solicited, conspired, or attempted to commit violation of § 940.01, § 940.02, § 940.03, or § 940.05 or violation of similar law of any other State or federal law if victim is child of parent

- Parent has committed violation of § 940.19(3), 1999, Stats., § 940.19(2), (4) or (5), § 940.225(1) or (2), § 948.025, § 948.03(2)(a), (3)(a), or (5)(a)1., 2., or 3., or § 948.085, or violation of similar law of any other State or federal law and violation results in great bodily harm or substantial bodily harm to child/Juv or another child of parent

§ 48.355(2d)(b)3m.
§ 938.355(2d)(b)3m.

- Parent has committed violation of § 948.051 (child trafficking) or violation of similar law of any other State or federal law if victim is child of parent

- Parental rights to another child have been involuntarily terminated

- In Ch 48 proceeding, parent has been found under § 48.13(2m) to have relinquished custody of child under § 48.195(1m) when child was 72 hours old or younger

§ 48.355(2c)(a)
§ 938.355(2c)(a)

2) In determining whether to find that reasonable efforts were made, Ct, while assuring child's/Juv's health and safety are paramount concerns, to consider whether

a. Comprehensive assessment of family's situation completed, including likelihood of protecting child's/Juv's health, safety, and welfare in home

b. Financial assistance, if applicable, was provided to family

c. Services were offered or provided to family

d. Monitoring of client progress and client participation in services was provided

e. Alternative ways of addressing family's needs were considered

§ 48.355(2)(b)6g.
§ 938.355(2)(b)6g., (2)(b)2m.
§ 48.357(2v)(a)1m.

3) If child/Juv placed outside home, order child/Juv into placement and order care responsibility of Cty Dept (or of DCF, if Ch 48 case in Cty with population of 750,000 or more) and assign that agency primary responsibility for providing services

§ 48.355(2)(b)6d.
§ 938.355(2)(b)6d.
§ 48.357(2v)(a)5.
§ 938.357(2v)(a)5.

4) If child/Juv is held in custody in RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, order must include a finding as to each of the following after considering the standardized assessment and the recommendation of the qualified individual under § 48.21(1)(c)/§ 938.21(1)(c):

a. Whether the needs of the child/Juv can be met through placement in a foster home

b. Whether placement of child/Juv in RCCCY, group home, or shelter care facility provides most effective and appropriate level of care for child/Juv in least restrictive environment

c. Whether placement is consistent with short-term and long-term goals for child/Juv, as specified in the permanency plan

d. Whether Ct approves or disapproves of the placement

§ 48.355(2)(b)6m.
§ 48.357(2v)(a)2.
§ 938.355(2)(b)6m.
§ 938.357(2v)(a)2.

5) Must include finding that Ct approves placement recommended by agency or, if placement other than that recommended by agency, Ct has given bona fide consideration to recommendations by agency and all parties relating to placement

§ 48.355(2)(b)6p.
§ 938.355(2)(b)6p.
§ 48.357(2v)(a)2m.
§ 938.357(2v)(a)2m.

6) If child/Juv is placed outside home and if child/Juv has one or more siblings also placed outside of home, a finding that Dept/agency has made reasonable efforts to place child/Juv in placement that enables sibling group to remain together, unless Ct determines joint placement would be contrary to safety or well-being of child/Juv or siblings, in which case Ct shall order Dept/agency to make reasonable efforts to provide frequent visitation or other ongoing interaction between child/Juv and siblings, unless Ct determines visitation or interaction contrary to safety or well-being of child/Juv or siblings

§ 48.345(3), § 938.34(3)

7) Ct may order placement of child/Juv in one of the following

a. If child/Juv is Indian child/Juv, Ct must comply with § 48.345(3m)/§ 938.345(1m) when considering placement

b. Home of relative

c. Nonlicensed home if placement for less than 30 days

d. Foster home, as defined in § 48.62, or similar out-of-state facility

e. Group home, as defined in § 48.625, or similar out-of-state facility

§ 938.345(4)

f. If Ct finds Juv in need of protection or services under § 938.13(4), Ct, instead of or in addition to any other disposition, may place Juv in home of guardian under § 48.977(2)

§ 48.625(1m)

g. Group home, or similar out-of-state facility, if child/Juv is at least 12, is custodial parent or EM, and is receiving inadequate care and is in need of safe structured living arrangement

h. RCCCY as defined in § 48.60, or similar out-of-state facility

i. With a parent in a QRFTF or similar out-of-state facility, if child's permanency plan includes a recommendation under § 48.38(4)(em) before the placement is made

j. Independent living situation

§ 48.345(3), § 938.34(3)

8) Ct may not order out-of-home placement with persons who have certain criminal histories

§ 48.355(3), § 938.355(3)

9) Ct may set reasonable rules of visitation for parent

a. Upon notice and after hearing

b. Finding in child's/Juv's best interest

§ 48.355(3)(b)
§ 938.355(3)(b)

10) Ct may not grant visitation to parent if parent has been convicted under § 940.01 or § 940.05 of homicide of parent of child/Juv's other parent, and conviction has not been reversed, set aside, or vacated, except as provided in para. 12) below

11) Except as provided in para. 12) below, Ct shall issue order prohibiting parent granted visitation under § 48.355(3)(a) or 938.355(3)(a) from having visitation with child/Juv if parent convicted under § 940.01 or § 940.05 of homicide of other parent and conviction has not been reversed, set aside, or vacated

a. On petition of child/Juv, guardian or legal custodian, person or agency bound by order, or DA or Corp Counsel of Cty in which dispositional order entered, or on Ct's own motion and on notice to parent

12) Paras. 10) and 11) above do not apply if Ct determines by clear and convincing evidence that visitation would be in best interests of child/Juv

a. Ct shall consider wishes of child/Juv in making determination

§ 48.356, § 48.38(4)(g)
§ 938.356, § 938.38(4)(g)

13) Ct must state conditions necessary for return of child/Juv/EM including changes required in

a. Parent's conduct

b. Child's/Juv's conduct

c. Nature of home

Kenosha Cty Dept of Human Servs v Jodie W (*In re TPR to Max GW*)
2006 WI 93
293 Wis. 2d 530

d. Conditions of return must be tailored to particular needs of parent and child

- Cannot impose condition of return that is impossible for parent to meet

§ 48.356(1)
§ 938.356(1)

14) Ct must give oral TPR warnings to CHIPS or Juv's parents who appear in Ct when change to out-of-home placement, including EMs of UCs to be placed outside home

§ 48.355(2)(b)2.
§ 938.355(2)(b)2.

15) Order must include name of place or facility where child/Juv to be placed, except when name of particular foster home not available

Note

a. To ensure ASFA compliance, if Ct orders placement that differs from agency recommendation, Ct must have given bona fide consideration to agency recommendation and heard relevant testimony

b. Agency must provide Ct and parent or guardian with name and address of foster parent with 21 days after change in dispositional order is entered, except

c. Upon notice and after hearing, Ct may order information withheld if finds disclosure would result in imminent danger to child/Juv, foster parent

§ 48.355(2)(b)2m.

16) If AEM placed outside home, order must include name of place or facility, including transitional placements, where AEM to be treated

§ 48.355(2m)
§ 938.355(2m)

17) Order may include name of transitional placement

a. May not designate specific time for transition

b. May place specific time limitations on transitional placement pending availability of ordered placement

c. Change in placement and revision of disposition procedures govern when transitions take place

§ 48.355(2e)
§ 938.355(2e)(b)

18) Permanency plan required when change from in-home to out-of-home placement ordered

a. See **JV 9** for description of permanency planning and requirements

§ 48.356, § 938.356
Marinette Cty v Tammy C
(In re TPR of Anthony C)
219 Wis. 2d 206 (1998)

19) TPR warning and notice of conditions for return to home of child or EM or reinstatement of visitation must be in changed dispositional order

Recommendation
See RMC Form JD-1753

a. Attach copy of involuntary TPR statute to Ct's order

Cynthia E v
La Crosse Cty
Human Servs Dept
(In Int of Jamie L)
172 Wis. 2d 218 (1992)

- Written notices containing more than specific ground comply with statute

Recommendation

- Include TPR warnings on each modification and extension

St Croix Cty v Michael D
(In re TPR to Matthew D)
2016 WI 35
368 Wis. 2d 170

- While better practice is to include written notice on all orders, only one order placing child outside home must contain written notice

20) See **JV 13** for TPR grounds

§ 48.357(6)(a)
§ 938.357(6)(a)

H. NO change in placement may extend expiration of dispositional order, EXCEPT

1) If change is from home to out-of-home placement, Ct may extend expiration date of original dispositional order to the latest of the following dates, unless Ct specifies a shorter period:

§ 48.357(6)(a)1.
§ 938.357(6)(a)1.

a. Date on which child/Juv attains 18 years of age

§ 48.357(6)(a)2.
§ 938.357(6)(a)2.

b. Date that is one year after date on which order is granted

§ 48.357(6)(a)3.
§ 938.357(6)(a)3.

c. If child/Juv is full-time student at secondary school or its vocational or technical equivalent and is reasonably expected to complete program before attaining 19 years of age, date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 19 years of age, whichever occurs first

§ 48.357(6)(a)4.
§ 938.357(6)(a)4.

d. If child/Juv is full-time student at a secondary school or its vocational or technical equivalent **and** an IEP under § 115.787 is in effect for the child/Juv, **and** child/Juv is 17 years of age or older when the order is granted, **and** the child/Juv or the child's/Juv's guardian on behalf of the child/Juv agrees to the order, the date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 21 years of age, whichever occurs first

- If under such an extended order, at any time after the child/Juv attains 18 years of age, the child/Juv, or the child's/Juv's guardian on behalf of the child/Juv, may request the Ct in writing to terminate the order and, on receipt of such request, the Ct, without hearing, shall terminate the order

e. Shorter period as specified by Ct

§ 48.357(5m)
§ 938.357(5m)

I. Ct shall order parent to provide statement of income, assets, debts, and living expenses of child's/Juv's parent and child/Juv to Ct or agency primarily responsible for implementing dispositional order by date certain. If child/Juv placed outside home, Ct shall determine liability of parent under § 49.345(14) (in Ch 48 case) or § 301.12(14) (in Ch 938 case)

§ 48.357(2m)(bm)
§ 938.357(2m)(bm)

J. If Ct changes placement to placement outside home, parent, if present at hearing, shall be requested to provide names and other identifying information of 3 relatives of child/Juv or other individuals 18 years of age or older whose homes parents request Ct to consider as placements for child/Juv, unless information previously provided under §§ 48.357(2m)(bm), (1)(c)2m., 48.21(3)(f), 48.335(6)/§§ 938.357(2m)(bm), (1)(c)2m., 938.21(2)(e) or (3)(f), or 938.335(6)

§ 48.357(2v)(d)1.
§ 938.357(2v)(d)1.

K. Ct shall order Dept or agency to conduct a diligent search in order to locate and provide notice of information specified in § 48.21(5)(e)2.a.–e./§ 938.21(5)(e)2.a.–e. to all relatives of the child/Juv and to all relatives of the child/Juv named under § 48.357(1)(c)2m. or (2m)(bm)/§ 938.357(1)(c)2m. or (2m)(bm), and adult relatives as defined under § 48.21(5)(e)1./§ 938.21(5)(e)1. within 30 days after removal unless child/Juv is returned home within that period

1) Ct may also order Dept or agency to conduct a diligent search to locate and provide notice to other adult individuals (named under § 48.357(1)(c)2m. or (2m)(bm)/§ 938.357(1)(c)2.m or (2m)(bm)) within 30 days after removal unless child/Juv returned home sooner

2) No notice required if Dept/agency has reason to believe it would be dangerous to child/Juv or parent if child were placed with that person or adult relative

§ 48.358, § 938.358

5. Trial Reunification

A. Definition

§ 48.358(1)(a)
§ 938.358(1)(a)

1) Means a period of 7 consecutive days or longer but not exceeding 150 days during which child/Juv who is placed in out-of-home placement under § 48.355/§ 938.355 or § 48.357/§ 938.357 resides in home of relative from which child/Juv was removed or in home of either parent for purpose of determining appropriateness of changing placement of child/Juv to that home

§ 48.358(1)(b)
§ 938.358(1)(b)

2) Trial reunification home means home in which child/Juv resides during a trial reunification

§ 48.358(2)(a)
§ 938.358(2)(a)

B. No trial reunification may occur without a Ct order

§ 48.358(2), § 938.358(2)

C. Procedure

1) Only person or agency primarily responsible for implementing dispositional order may request Ct to order trial reunification

2) Request shall contain

a. Name and address of requested trial reunification home

b. Statement describing why trial reunification is in best interest of child/Juv

c. Statement describing how trial reunification satisfies objectives of permanency plan

3) Request may not be made on sole ground that emergency condition necessitates an immediate removal from out-of-home placement

a. If emergency condition necessitates immediate removal, proceed as provided in § 48.357(2)(a)/§ 938.357(2)(a)

4) Person or agency requesting trial reunification shall submit request to Ct and cause written notice to be sent to child/Juv, parent, guardian or legal custodian or child/Juv, foster parent or other physical custodian described in § 48.62(2) of child/Juv, CASA, all parties bound by dispositional order and, if child/Juv is Indian child/Juv who has been removed from home of parent or Indian custodian, Indian custodian and tribe

§ 48.358(2)(c)
§ 938.358(2)(c)

D. Hearing

1) Any person receiving notice of requested trial reunification may obtain hearing by filing an objection with Ct within 10 days after request filed with Ct

2) If objection filed, a hearing shall be held within 30 days after request filed with Ct. Not less than 3 days before hearing, person or agency requesting trial reunification or Ct shall provide notice of hearing to all persons entitled to receive notice

§ 48.358(2)(d)
§ 938.358(2)(d)

E. Order

1) If Ct finds trial reunification is in best interests of child/Juv and the trial reunification satisfies objectives of child/Juv's permanency plan, Ct shall order trial reunification

a. Trial reunification shall terminate 90 days after date of order, unless Ct specifies a shorter time in order, extends trial reunification, or revokes trial reunification

b. No trial reunification order may extend expiration date of original dispositional order or any extension order under § 48.365/§ 938.365

c. Trial reunification order is not a change of placement under § 48.357/§ 938.357

d. Unless trial reunification order is revoked, at end of trial reunification, person or agency primarily responsible for implementing dispositional order shall:

- Return child/Juv to previous out-of-home placement

— May do so without further order of Ct, but

— Within 5 days after return, person or agency shall provide notice of date of return and address of placement to all persons entitled to receive notice

- Request change of placement under § 48.357/§ 938.357 to place child/Juv in new out-of-home placement

- Request change of placement under § 48.357/§ 938.357 to place child/Juv in trial reunification home

§ 48.358(3), § 938.358(3)

F. Extension of trial reunification

1) Person or agency primarily responsible for implementing dispositional order may request an extension of trial reunification

a. Request shall contain statement describing how trial reunification continues to be best interests of child/Juv

b. No later than 10 days before expiration of trial reunification, person or agency that requests extension shall submit request to Ct that ordered trial reunification and shall cause notice of request be provided to all persons entitled to notice under **Sec. C.**4) above

2) Extension hearing; when required

a. Any person who is entitled to receive notice of extension request may obtain hearing by filing an objection with Ct within 10 days after request filed with Ct

b. If objection filed, Ct shall schedule a hearing

c. If Ct unable to conduct hearing before trial reunification expires, Ct may extend trial reunification for not more than 30 days without hearing

d. If hearing scheduled, not less than 3 days before hearing, person or agency requesting extension or Ct shall provide notice to all persons entitled to notice of extension

3) If Ct finds trial reunification continues to be in best interests of child/Juv, Ct shall grant an order extending trial reunification for period specified by Ct

a. Any number of extensions may be granted**,** but total period of trial reunification may not exceed 150 days

§ 48.358(4), § 938.358(4)

G. Revocation of trial reunification

1) If person or agency primarily responsible for implementing dispositional order determines based on current circumstances that trial reunification is no longer in best interests of child/Juv, person or agency may, without prior Ct order, place child/Juv in previous out-of-home placement as provided in **Sec. G.**2) below or place child/Juv in new out-of-home placement as provided in **Sec. G.**3) below

2) If person or agency primarily responsible for implementing dispositional order places child/Juv in previous out-of-home placement, within 3 days after removing child/Juv from trial reunification home, person or agency shall submit request for revocation of trial reunification to Ct that ordered trial reunification and shall cause notice to all persons entitled to notice under **Sec. C.**4) above

a. Request shall contain date on which child/Juv removed from trial reunification home, address of current placement, and reason for proposed revocation

3) If person or agency responsible for implementation of dispositional order places child/Juv in new out-of-home placement, that person or agency shall, within 3 days after removing child/Juv from trial reunification home, request change in placement under § 48.357(1)(am)/§ 938.357(1)(am)

a. Procedures specified in § 48.357(1)(am)/§ 938.357(1)(am) apply to change of placement requested under this method, except request shall include date on which child/Juv was removed from trial reunification home in addition

to information required under § 48.357(1)(am)1./§ 938.357(1)(am)1.

b. Trial reunification is revoked when change-in-placement order is granted

4) Revocation hearing

a. Any person entitled to receive notice under **Sec. G.**2) above may obtain a hearing by filing an objection within 10 days after request is filed with Ct

b. If hearing is scheduled, not less than 3 days before hearing, Ct shall provide notice of hearing, with copy of request for revocation, to all persons entitled to notice under **Sec. C.**4) above

c. If Ct finds trial reunification is no longer in best interests of child/Juv who has been placed in previous out-of-home placement, Ct shall grant order revoking trial reunification

§ 48.358(5), § 938.358(5)

H. Removal from foster home or other physical custodian

1) If hearing is held for trial reunification and trial reunification would remove child/Juv from foster home or other placement with physical custodian described in § 48.62(2), Ct shall give foster parent or other physical custodian a right to be heard at hearing by permitting a written or oral statement during hearing or to submit a written statement before hearing relating to child/Juv and requested trial reunification

a. Foster parent or other physical custodian is not a party unless there is a basis other than receiving notice of right to be heard

§ 48.358(6), § 938.358(6)

I. Prohibited trial reunification based on homicide of parent

1) Except as provided in **Sec. I.**3) below, Ct may not order trial reunification in home of person convicted under § 940.01 of 1st-degree intentional homicide, or under § 940.05 of 2nd-degree intentional homicide, of parent of child/Juv, if conviction has not been reversed, set aside, or vacated

2) Except as provided in **Sec. I.**3) below, if parent in whose home child/Juv is placed for trial reunification is convicted under § 940.01 of 1st-degree intentional homicide, or under § 940.05 of 2nd-degree intentional homicide, of child/Juv's other parent and conviction has not been reversed, set aside, or vacated, Ct shall revoke trial reunification and child/Juv shall be returned to previous out-of-home placement, or pursuant to § 48.357/§ 938.357 placed in new out-of-home placement

3) Paras. 1) and 2) above do not apply if Ct determines by clear and convincing evidence that placement would be in best interests of child/Juv

a. Ct shall consider wishes of child/Juv in making that determination

§ 48.363, § 938.363
RMC Form JD-1786

6. Revision of Dispositional Order

§ 48.357, § 48.345(3)
§ 938.357, § 938.34(3)

A. Change in existing Ct-ordered out-of-home placement must be made according to statutory change-of-placement procedures (See Sec. 3 above)

§ 48.363
§ 938.363

B. If child/Juv was NOT placed out of home under existing Ct order, revision MAY NOT be used to place child/Juv out of home (Follow procedures in Sec. 4 above)

§ 48.363(1)
§ 938.363(1)

C. Revision MAY NOT extend effective period of original order or, under § 938.34(6)(am) impose more than a total of 30 days or under § 938.34(3)(f) impose more than a total of 365 days of detention, nonsecure custody, or inpatient treatment of Juv

§ 938.538(3)(b)

D. Does not apply to Juvs in SJO program

§ 48.363, § 938.363

E. Revision may be requested by

1) Child/Juv

2) Parent, guardian, legal custodian, or Indian custodian

3) Any person or agency bound by dispositional order

4) DA or Corp Counsel in Cty in which order entered

5) Ct

6) EM, UC's GAL

§ 48.363, § 938.363

F. Request or Ct proposal must

1) Set forth in detail proposed revision and new information available that affects advisability of Ct's disposition

2) Be submitted to Ct

§ 48.363, § 938.363

G. Hearing required before revision

1) If request or Ct proposal indicates that new information available that affects advisability of Ct's order

2) Unless written waivers of objection signed by all parties entitled to notice and Ct approves

3) At least 3 days' notice of hearing required to

   a. Child/Juv

   b. Parent, guardian, legal custodian, and Indian custodian

   c. Foster parent or other physical custodian described in § 48.62(2)

   d. CASA

   e. All parties bound by dispositional order

   f. DA or Corp Counsel in Cty in which order entered

   g. If child/Juv is Indian child/Juv placed outside home of parent or Indian custodian, child's/Juv's tribe

   h. If EM, to UC's GAL and to AEM

4) Copy of request or proposal must be attached to notice

5) Ct may proceed immediately with hearing if all parties consent

§ 48.363(1), § 938.363(1)
RMC Form JD-1718

6) If proposed revision for change in amount of child support, Ct shall order parent to provide statement of income, assets, debts, and living expenses of parent and Juv to Ct or person or agency primarily responsible for implementing dispositional order by date specified by Ct

§ 48.363(2)
§ 938.363(2)

7) If Ct revises dispositional order with respect to amount of child/Juv support for child placed in residential, nonmedical facility, Ct shall determine liability of parent under § 49.345(14) (in Ch 48 case) or § 301.12(14) (in Ch 938 case)

§ 48.356
§ 938.356

8) If Ct denies a parent visitation, Ct shall provide TPR warning and notice of conditions for parent to be granted visitation

§ 48.363(1m)
§ 938.363(1m)

9) If hearing held, any party may present relevant evidence

a. In addition, Ct shall permit foster parent or other physical custodian described in § 48.62(2) to make written or oral statement during hearing or submit written statement before hearing, relevant to revision

b. Foster parent or other physical custodian not a party to proceeding

§ 48.365, § 938.365

7. Extension of Orders

§ 48.365(5)(b)1.–4.
§ 938.365(5)(b)1.–4.

A. May no longer be required when placement in nonsecure out-of-home placement and original order provides that it shall terminate on latest of the following dates: the date on which child/Juv attains 18 years of age; the date that is one year after date on which order is granted; date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 19 years of age if child/Juv is a full-time student at secondary school or its vocational or technical equivalent and is reasonably expected to complete program before attaining 19 years of age; or date on which child/Juv is granted high school or high school equivalency diploma or the date on which child/Juv attains 21 years of age, whichever occurs first, if child/Juv is a full-time student at a secondary school or its vocational or technical equivalent and if IEP is in effect

1) Ct review of out-of-home placement anticipated to be done at permanency review hearing rather than extension hearing

§ 48.365(7), § 938.365(7)

B. Exclusive method for extending dispositional orders

1) May not use for change in placement (See **Secs. 3** and **4** above for change-in-placement procedure)

2) May not use for revocation of community supervision or aftercare (See **Sec. 15** below)

3) May not use for trial reunification (See **Sec. 5** above)

§ 48.365(1m)
§ 938.365(1m)

C. Extension may be requested by

1) Child/Juv

2) Parent, guardian, legal custodian, or Indian custodian

3) EM, UC's GAL

4) Any person or agency bound by dispositional order

5) DA or Corp Counsel

6) Ct on own motion

§ 48.185(3)
§ 938.185(2m)

D. Request submitted to Ct that entered order

§ 48.365(2), § 938.365(2)

E. Hearing required

1) Ct must notify of time and place of hearing

a. Child/Juv

b. Parent, guardian, legal custodian, or Indian custodian

c. All parties present at original hearing

d. Foster parent or other physical custodian described in § 48.62(2)

e. CASA

f. DA or Corp Counsel in Cty where dispositional order entered

g. If child is Indian child/Juv who is placed outside home of parent or Indian custodian, child's/Juv's tribe

h. If EM, to UC's GAL and to AEM

§ 48.365(2m)(a)
§ 938.365(2m)(a)

2) Any party may present evidence relevant to issue of extension

§ 48.365(2m)(ag)
§ 938.365(2m)(ag)

a. In addition, foster parent or other physical custodian has right to make written or oral statement during hearing or to submit written statement before hearing relevant to extension

§ 48.365(3), § 938.365(3)

3) Appearance of child/Juv may be waived by consent of child/Juv or child's/Juv's Atty or GAL

F. Time periods

§ 48.365(6), § 938.365(6)

1) Petition for extension must be filed before expiration of dispositional order

2) Hearing held before termination of dispositional order or period of temporary extension under § 48.365(6) or § 938.365(6)

§ 48.365(6), § 938.365(6)
SDR v St (In Int of SDR)

109 Wis. 2d 567 (1982)
RMC Form JD-1765

3) If request to extend made before termination of order but Ct unable to conduct hearing before termination, Ct may extend order for period of not more than 30 days, not including any period of delay resulting from any circumstances specified in § 48.315(1) or § 938.315(1)

a. Ct shall grant appropriate relief under § 48.315(3) or § 938.315(3) if hearing not held within 30-day time period. Failure to object to untimely filing waives objection to Ct's competency to act

St v Michael S
(In Int of Michael S)
2005 WI 82
282 Wis. 2d 1

4) Ct may not grant 30-day extension after dispositional order expires. Expiration of dispositional order cannot be waived

a. Once a dispositional order expires, nothing in § 48.315/§ 938.315 or § 48.365(6)/§ 938.365(6) extends the validity of the order

§ 48.315(1)(fm)
§ 938.315(1)(a)8.

5) Exclude in computing time periods any period of delay resulting from inability of Ct to provide child/Juv with notice of extension due to runaway status or unavailability of child/Juv

§ 938.355(4)(b)
St v WP (In Int of WP)
153 Wis. 2d 50 (1990)

6) Ct may hold extension hearing for Juv under supervision of DOC under § 938.34(4d), (4h), (4m), or (4n) after Juv attains age 17 IF

a. Original order expires before Juv's 17th birthday; and

b. Petition to extend filed

- Before dispositional order expires AND
- Before Juv attains age 17; and

c. Hearing on request heard within period of extension under § 938.365(6), not including any period of delay resulting from any of circumstances specified in § 938.315(1)

Recommendation

d. Since statutes unclear if same requirements for children/Juvs not in correctional placement under dispositional order, follow same procedure

§ 48.365(2g)(a)
§ 938.365(2g)(a)

G. Written report required

1) Filed by primary dispositional person or agency

2) Must state to what extent dispositional order has been meeting objectives of child's/Juv's rehabilitation or care and treatment plan or rehabilitation and treatment of EM and care of UC

§ 48.365(2g)(b)
§ 938.365(2g)(b)

3) If child/Juv placed outside of home, report must include

§ 48.38(5), § 938.38(5)

a. Copy of permanency review panel report and response from primary agency

§ 48.365(2g)(b)
§ 938.365(2g)(b)

b. Evaluation of child's/Juv's adjustment to placement and progress

- Suggestions for amendment of permanency plan
- Specific information showing efforts made to achieve permanency goal of permanency plan

— Including efforts of parents to remedy factors that contributed to placement

§ 48.365(2g)(b)4.
§ 938.365(2g)(b)4.

c. If Indian child/Juv, Ct must comply with § 48.365(2g)(b)4./§ 938.365(2g)(b)4. regarding active efforts to prevent breakup of Indian child's/Juv's family

§ 48.365(2g)(b)3.
§ 938.365(2g)(b)3.

4) If child/Juv placed outside of home, in foster home, group home, nonsecured RCCCY, or shelter care facility, for 15 of the most recent 22 months (not including runaway periods or periods residing in trial reunification home)

a. Report must include statement of whether recommendation made to TPR

b. If recommendation made, statement to indicate

- Date on which recommendation made
- Any previous progress to accomplish TPR
- Any barriers to TPR, steps to overcome barriers, and when steps to be completed
- Reasons why adoption in best interest of child/Juv and whether child/Juv should be registered with adoption information exchange

c. If recommendation not made, explanation of why not

- If lack of appropriate adoptive resources is primary reason for not recommending TPR, agency to recommend that child/Juv be registered with adoption information exchange or report why registering child/Juv is contrary to best interest of child/Juv

§ 48.365(1), § 938.365(1)

d. Child/Juv to be considered to be placed out of home

- On date child/Juv first removed from home, EXCEPT

- Juv who on removal from home was first placed in Juv detention facility, Juv correctional facility, or secured RCCCY for 60 days or more and then moved to nonsecure out-of-home placement is considered placed outside home on date moved to nonsecure out-of-home placement

§ 48.365(2g)(c)
§ 938.365(2g)(c)

5) If child/Juv not placed outside home, report must include

a. Description of efforts by all parties toward meeting objectives of treatment, care, or rehabilitation

b. Explanation of why efforts not yet successful

c. Anticipated future planning for child/Juv

§ 48.365(4), § 938.365(4)

H. Ct to determine which dispositions to extend

REH v St (In Int of REH)
101 Wis. 2d 647
(CA 1981)

1) Discretionary decision by Ct

RH v Dane Cty DSS
(In Int of RH)
157 Wis. 2d 161
(CA 1990)

2) Order resulting from original petition based on unavailability may be extended based on failure to meet conditions relating to other parental deficiencies. Petition invokes jurisdiction. Ct has broad authority at extension

§ 48.365(2m)
§ 48.355(2)(a)
§ 938.365(2m)
§ 938.355(2)(a)

I. Ct must make written findings of fact and conclusions of law

1) Based on evidence presented

2) If extension of out-of-home placement ordered

§ 48.355(2)(b)6.
§ 938.355(2)(b)6.

a. Written order must include reasonable efforts finding, subject to §§ 48.355(2d)/938.355(2d)

- Whether reasonable efforts were made by primary agency to make it possible for child/Juv to return safely to home

§ 48.365(2m)(b)
§ 938.365(2m)(b)

b. Ct must state on record reasons for extension

REH v St (In Int of REH)
101 Wis. 2d 647
(CA 1981)

3) Finding of dangerousness not required to extend commitment to Juv correctional facility

SDS v Rock Cty DSS
(In Int of TMS)
152 Wis. 2d 345
(CA 1989)

4) Burden of proof on petitioner is greater weight of credible evidence

§ 48.365(2m), § 48.355
§ 938.365(2m), § 938.355

J. If Ct extends order, new dispositional order must be issued

§ 48.355(2)(b)
§ 938.355(2)(b)

1) Must be in writing

§ 48.355(5), § 938.355(5)

2) Any party, person, or agency providing disposition services for child/Juv or EM, bound by Ct order

RH v Dane Cty DSS
(In Int of RH)
157 Wis. 2d 161
(CA 1990)

3) In extending order, Ct has same broad authority as to child's care and treatment that it had in original disposition

St v James P
(In Int of James P)
180 Wis. 2d 677
(CA 1993)

a. Ct has obligation to fashion program of care, protection, and rehabilitation of Juv regardless of motive of Juv's offense. Code does not explicitly or implicitly require disposition related to violation

§ 48.365(5), § 48.355(4)
§ 938.365(5), § 938.355(4)
RMC Form JD-1776
RMC Form JD-1814
RMC Form JD-1815

8. Termination of Orders/Case Closure Orders

§ 48.355(4)(c)
§ 48.365(5)(a)

A. UCHIPS order that is made before UC is born shall terminate one year after date on which order is granted unless Judge specifies shorter period of time or terminates order sooner

§ 48.355(4)(a)
§ 48.365(5)(a)

B. Order made before child attains 18 that places or continues placement of child in home shall terminate one year after date on which order is granted unless Judge specifies a shorter period of time or Judge terminates order sooner

§ 48.368

1) EXCEPT, if petition for TPR filed or appeal from TPR judgment filed during year dispositional order in effect, order remains in effect until all proceedings relating to filing of petition or appeal concluded

§ 938.355(4)(a)
§ 938.365(5)(a)

C. Order made before Juv attains 18 that places or continues placement of Juv in home shall terminate one year after date on which order granted unless Ct specifies shorter period of time or Ct terminates order sooner

§ 938.368

1) Except if TPR petition/appeal filed during year dispositional order in effect

§ 48.355(4)(b)
§ 938.355(4)(b)

D. Order made before child/Juv attains 18 years of age that places or continues placement of child/Juv in foster home, group home, or RCCCY, or in home of relative other than parent, or in supervised independent living arrangement, shall terminate on the latest of the following dates, unless the Judge (Ch 48)/Ct (Ch 938) terminates the order sooner:

§ 48.355(4)(b)1.
§ 938.355(4)(b)1.

1) Date on which child/Juv attains 18 years of age

§ 48.355(4)(b)2.
§ 938.355(4)(b)2.

2) Date that is one year after the date on which the order is granted

§ 48.355(4)(b)3.
§ 938.355(4)(b)3.

3) If child/Juv is full-time student at secondary school or its vocational or technical equivalent and is reasonably expected to complete program before attaining 19 years of age, date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 19 years of age, whichever occurs first

§ 48.355(4)(b)4.
§ 938.355(4)(b)4.

4) If child/Juv is a full-time student at a secondary school or its vocational or technical equivalent, **and** an IEP under § 115.787 is in effect for the child/Juv, **and** child/Juv is 17 years of age or older when the order is granted, **and** the child/Juv or the child's/Juv's guardian on behalf of the child/Juv agrees to the order, the date on which child/Juv is granted high school or high school equivalency diploma or date on which child/Juv attains 21 years of age, whichever occurs first

§ 48.355(4)(b)4.
§ 938.355(4)(b)4.

a. If under such an extended order, at any time after the child/Juv attains 18 years of age, the child/Juv, or the child's/Juv's guardian on behalf of the child/Juv, may request the Ct in writing to terminate the order and, on receipt of such request, the Ct, without a hearing, shall terminate the order

§ 48.368(1)
§ 938.368(1)

5) EXCEPT if TPR petition/appeal filed during year dispositional order in effect. *See* **Sec. B**.1), *supra*

§ 938.355(4)(b)

E. If disposition to Type 2 RCCCY, Juv correctional facility, or secured RCCCY, made before Juv attains 18 years of age, Ct may make order apply for up to 2 years or until Juv's 18th birthday whichever is earlier, unless Ct specifies shorter period or terminates order sooner

F. Case closure orders, see JV 8, Sec. 10

§ 48.366, § 938.366

9. Extended Out-of-Home Care

§ 48.366(1)
§ 938.366(1)

A. Applies to a person who is a full-time student of a secondary school or its vocational or technical equivalent, for whom an IEP is in effect under § 115.787, and to whom any of the following applies:

1) The person is placed in a foster home, group home, or RCCCY, in the home of a relative other than a parent, or in a supervised independent living arrangement under a dispositional order, a change-in-placement order, or an extended order, that terminates on or after the person's 18th birthday, or

2) The person is in the guardianship and custody of an agency specified under a TPR order that terminates on the person's 18th birthday, or

3) The person is placed in a shelter care facility on the date on which an order in paras. 1) or 2) above terminates

§ 48.366(2)
§ 938.366(2)

B. Transition-to-Discharge/Voluntary Agreement/Extension

§ 48.366(2)(a)
§ 938.366(2)(a)

1) Not less than 120 days before an order terminates, the agency primarily responsible for providing services under the order [hereinafter "agency"] shall inquire of the person whether he/she

a. Wishes to be discharged from out-of-home care on termination of the order—if so, the agency shall request a transition-to-discharge hearing (see **Sec. C.** below)

b. Wishes to continue in out-of-home care under a voluntary agreement—if so, the agency and the person shall enter into such an agreement

§ 48.365(5)(b)4.
§ 938.365(5)(b)4.

c. Wishes to continue in out-of-home care until he/she obtains a high school diploma or its equivalent, or attains 21 years of age, whichever occurs first, under an extension of the order—if so, the agency shall request an extension of the order

§ 48.366(2)(b)1.–4
§ 938.366(2)(b)1.–4.

C. Transition-to-Discharge Hearing Procedure

1) When a person wishes to be discharged, the agency shall

a. Request the Ct to hold a transition-to-discharge hearing and

b. Cause notice of that request to be provided to that person, the parent, guardian, and legal custodian of that person, any foster parent or other physical custodian of that person, that person's CASA, all parties who are bound by the dispositional order, and, if that person is an Indian child who has been removed from the home of his or her parent or Indian custodian, that person's Indian custodian and tribe

2) The Ct shall hold a hearing within 30 days after receipt of the request

3) Not less than 3 days before the hearing, the agency requesting the hearing shall

a. Provide notice of the hearing to all persons who are entitled to receive notice of the request (see **Sec. C.**1)b. above);

b. Attach a copy of the request to the notice

4) If all persons who are entitled to receive the notice consent, the Ct may proceed immediately with the hearing

5) At the hearing, the Ct shall

a. Review the options with the person who is the subject of an order (See **Sec. B.** above)

b. Advise the person that he/she may continue in out-of-home care under an extension of an order or under a voluntary agreement

6) If the Ct determines the person understands that he/she may continue in out-of-home care, but wishes to be discharged on termination of the order, the Ct shall

a. Advise the person that he/she may enter into a voluntary agreement at any time before he/she is granted a high school or high school equivalency diploma or attains 21 years of age, whichever occurs first, so long as he/she is a full-time student at a secondary school or its vocational or technical equivalent and an IEP is in effect for him/her

7) If the Ct determines that the person wishes to continue in out-of-home care under an extension of an order, the Ct shall schedule an extension hearing

8) If the Ct determines that the person wishes to continue in out-of-home care under a voluntary agreement, the Ct shall order the agency to provide transition-to-independent-living services for the person under a voluntary agreement

§ 48.366(3)(a)–(d)
§ 938.366(3)(a)–(d)

D. Voluntary "Transition-to-Independent-Living" Agreement

1) On termination of an order, the person, or the person's guardian on behalf of the person, and the agency may enter into a transition-to-independent-living agreement under which the agency provides services to the person to assist him/her in transitioning to independent living, and the person continues in out-of-home care and continues to be a full-time student at a secondary school or its vocational or technical equivalent under an IEP, until the earliest of the following:

   a. The date on which the person attains 21 years of age

   b. Is granted a high school or high school equivalency diploma

   c. Or terminates the agreement—the person, or his/her guardian, may terminate the agreement at any time by written notification to the agency

§ 48.366(3)(am)
§ 938.366(3)(am)

2) No later than 150 days after a transition-to-independent-living agreement is entered into, the responsible agency must petition Ct to determine that placement is in person's best interests. Ct must hold hearing within 30 days after date of petition. Ct must grant or deny order within 180 days after transition-to-independent-living agreement was entered into

3) If a voluntary agreement is terminated by the person or the person's guardian, the person (or guardian) may request the agency to enter into a new voluntary agreement at any time before the person is granted a high school or high school equivalency diploma or attains 21 years of age, whichever occurs first, so long as the person is a full-time student at a secondary school or its vocational or technical equivalent and an IEP is in effect for him/her. If the request meets the conditions set forth in the rules promulgated, the agency shall enter into a new voluntary agreement with that person

§ 48.366(3)(d)
§ 938.366(3)(d)

4) If agency that enters into voluntary agreement is DCF (Ch 48)/DOC (Ch 938), or Cty Dept, voluntary agreement must state that DCF/DOC or Cty Dept has placement and care responsibility for person and has primary responsibility for providing services

RMC Form JD-1774

10. Sanctions

§ 938.355(6)(a)

A. Applies to JIPS (based on other than habitual truancy) or Juv adjudged delinquent or to have violated civil law or ordinance, (other than ordinance under § 118.163(1m) or (2)), who violates dispositional order

FT v St (In Int of FT)
150 Wis. 2d 216
(CA 1989)

1) ONLY IF, at dispositional hearing, Judge

   a. Explained conditions to Juv AND

   b. Informed Juv of possible sanctions for violation AND

   c. Order contained statement listing conditions

d. Or, if before violation, Juv acknowledged in writing that s/he read or had read to him/her conditions and sanctions and that s/he understood conditions and possible sanctions

St v Eugene W
(In Int of Eugene W)
2002 WI App 54
251 Wis. 2d 259

e. Juv must have ability to understand conditions of dispositional order and potential sanctions

- If Juv raises issue of competency, burden on State to establish by clear and convincing evidence that Juv has ability to understand

2) But Ct CANNOT impose sanction on Juv who is subject to order that terminates when Juv attains 21 years of age

§ 938.355(6)(d)

B. Possible sanctions

St v AA (In Int of AA)
2020 WI App 11
391 Wis. 2d 416

1) Place Juv in Juv detention facility or in place of nonsecure custody or Juv portion of Cty jail that meets standards for up to 10 days and provide educational services consistent with his or her current course of study during period of placement. "Day" means a calendar day and not a series of hours

a. Credit granted against period of detention or nonsecure custody for all time spent in secure custody in connection with course of conduct for which detention or nonsecure custody imposed

b. If Ct orders placement of Juv in place of nonsecure custody under supervision of Cty Dept, Ct must order Juv into placement and care responsibility of Cty Dept as required under 42 USC 672(a)(2) and must assign Cty Dept primary responsibility for providing services

§ 938.355(6)(cm)

c. Ct may not order nonsecure placement unless Ct finds agency primarily responsible for providing services has made reasonable efforts to prevent removal of Juv from home and that continued placement in home is contrary to welfare of Juv

§ 938.355(6)

d. Ct may not impose placement in Juv detention or Juv portion of Cty jail for violation of JIPS order

§ 938.355(6)(d)

2) Suspend or limit use of Juv's operating privilege under § 340.01(40) or any approval issued under Ch 29 for period not more than 3 years

a. If Ct suspends Juv's approval issued under Ch 29, it shall immediately take possession of the suspended approval and forward it to issuing Dept, together with notice of suspension. If Ct suspends Juv's license under Ch 343, Clerk of Ct may take possession of license and, if it does so, Ct must destroy the license

3) Detain Juv at home or current residence for period of not more than 30 days under rules of supervision specified in order. Order may require electronic monitoring

4) Order Juv to perform not more than 25 hours of uncompensated community service work in supervised work program

§ 938.355(6)(d)5.

5) Participation in social, behavioral, academic, community service, and other programming of Youth Report Center

a. After school

b. In evening

c. On weekends

d. On other nonschool days, or

e. At any other time Juv not under immediate adult supervision

§ 938.355(6)(e)

6) Sec. 938.355(6) does not preclude person aggrieved by violation to proceed against Juv for contempt of Ct under Ch 785

§ 938.355(6)(b)

C. Motion for imposition of sanction

1) May be brought by

a. Primary person

b. Primary agency

c. DA or Corp Counsel

d. Ct

- If Ct initiates motion, Ct disqualified from holding hearing on motion

§ 938.355(6)(an)

e. Municipal Ct may petition Ct to order placement in Juv detention facility or sanction for home detention with electronic monitoring specified in § 938.355(6)(d)1. and 3., if Juv who has violated municipal ordinance (other than an ordinance adopted under § 118.163(1m) or (2)) violates a condition of municipal dispositional order and if

- At time of judgment, Municipal Ct explained conditions to Juv and informed Juv of possible sanctions, or

- If before violation Juv has acknowledged in writing that s/he read or had read to him/her conditions and sanctions and that s/he understood conditions and possible sanctions

§ 938.17(2)(h)4.

- Ct shall order municipality to pay Cty cost of providing sanction imposed

§ 938.355(6)(b)

f. Petition shall contain statement whether Juv subject to federal Indian Child Welfare Act (ICWA), and, if Juv may be subject to ICWA, names and addresses of Juv's Indian custodian, if any, and tribe, if known

2) Notice of motion given to

a. Juv, GAL, Counsel

b. Parent

c. Guardian

d. Legal custodian

e. All parties present at original dispositional hearing

§ 938.355(6)(bm)

f. If person initiating motion knows or has reason to know that Juv is Indian Juv and if motion seeking removal of Juv from home of parent or Indian custodian and placement in place of nonsecure custody, notice also to Indian Juv's Indian custodian and tribe

§ 938.355(6)(c)

D. Ct must hold hearing before imposing sanction

§ 938.355(6)(d)
St v Jason RN
(In Int of Jason RN)
201 Wis. 2d 646
(CA 1996)

1) Burden of proof at sanction hearing is preponderance of the evidence

§ 938.355(6m)(b), (bm), (c)

2) Hearing must be held within 15 days after filing of motion for imposition of sanction, except as provided by § 938.355(6m)(bm) in certain cases involving Indian Juvs. If Indian Juv, and removal is sought from home of parent or Indian custodian, and placement in nonsecure custody, then hearing must be at least 10 days after receipt of notice by Indian Juv's parent, Indian custodian, and tribe; if identity or location of parent, Indian custodian, or tribe cannot be determined, then at least 15 days after receipt of notice by Sec'y of Interior. On request of Indian parent, Indian custodian, or tribe, Ct shall grant a continuance or up to 20 additional days

§ 938.299

E. Hearing procedure

§ 938.23(1m)(am)
§ 938.355(6)(c)

1) Juv subject to sanction has right to counsel at hearing

2) Juv may present evidence

Craig SG v State
(In Int of Craig SG)
209 Wis. 2d 65 (CA 1997)
St v BS (In Int of BS)
162 Wis. 2d 378
(CA 1991)

3) Sanctions in § 938.355(6) are not punitive contempt requiring same due process granted adults

a. Statutory procedure provides adequate due process

b. Sanctions not punitive, but designed to protect the Juv

c. Sanction does not operate as punishment and does not subject Juv to double jeopardy if waived to Adult Ct

§ 938.299(4)(b)
Note

4) Rules of evidence do not apply to any postdispositional hearing. *See* **Sec. 2.D.**, *supra*

§ 938.275(1)(c)

5) If Ct imposes sanctions, Ct shall order parents to contribute toward cost of sanction the proportion of total amount that Ct finds parents able to pay

St v Jason RN
(In Int of Jason RN)
201 Wis. 2d 646
(CA 1996)

6) Imposition of appropriate sanction in Ct's discretion because there is no requirement for imposing sanction in graduated order of severity

St v Jason RN
(In Int of Jason RN)
201 Wis. 2d 646
(CA 1996)

7) If violation by delinquent based on truancy from school, Ct not required to consider evidence under § 118.16(5) before imposing sanction

St v Ellis H
(In Int of Ellis H)
2004 WI App 123
274 Wis. 2d 703

8) Multiple conditions of dispositional order may be violated in any one incident, but § 938.355(6)(d) only allows one sanction per incident, not per condition violation

§ 938.355(6)(cm)

9) Ct must make reasonable efforts finding for placement in nonsecure custody unless findings made in dispositional order

§ 938.355(6)(cr)

10) Ct may not order sanction of removal of Indian Juv from home of Indian Juv's parent or Indian custodian and placement in secure custody unless Ct finds by clear and convincing evidence, including testimony of one or more qualified expert witnesses, that continued custody of Indian Juv by parent or Indian custodian is likely to result in serious emotional or physical damage to Juv, and Ct finds active efforts under § 938.028(4)(d)2. have been made to prevent breakup of Indian Juv's family, and efforts have proved unsuccessful

- Findings under § 938.355(6)(cr) not required if made in dispositional order under which Juv is being sanctioned

§ 938.355(6m)(a)

F. If Juv violates a municipal ordinance enacted under § 118.163(2) (habitual truancy) or a condition of JIPS order based on habitual truancy, Ct may order as a sanction any combination of the following

§ 938.355(6m)(a)1g.

1) Place Juv in Juv detention facility or Juv portion of Cty jail or place of nonsecure custody for not more than 10 days and provide educational services consistent with his or her current course of study during period of placement

a. Juv shall be given credit against the period of detention or nonsecure custody for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure detention imposed

b. If Ct orders placement of Juv in place of nonsecure custody under supervision of Cty Dept, Ct must order Juv into placement and care responsibility of Cty Dept as required under 42 USC 672(a)(2) and must assign Cty Dept primary responsibility for providing services

c. Use of placement in Juv detention facility or Juv portion of approved Cty jail subject to Cty Bd resolution under § 938.06(5)

§ 938.355(6m)(a)1m.

2) Suspend or limit use of operating privileges defined in § 340.01(40) or any approval issued under Ch 29 for not more than one year

a. If Juv does not hold valid license other than instructional permit under § 343.07 or restricted license under § 343.08, Ct may order suspension or limitation to begin on date Juv is *eligible* for issuance or reinstatement of license regardless of when Juv applies for license

§ 938.355(6m)(a)2.

3) Order Juv to participate in counseling or supervised work program or other community service work under § 938.34(5g) for not more than 25 hours

§ 938.355(6m)(a)3.

4) Order Juv detained at home or place of current residence for not more than 30 days except during hours in which Juv attending religious worship or school program, including travel time required to get to and from the school program or place of worship

a. Order may permit Juv to leave his/her home if accompanied by parent or guardian

§ 938.355(6m)(a)4.

5) Participation in social, behavioral, academic, community service, and other programming of Youth Report Center

a. After school

b. In evening

c. On weekends

d. On other nonschool days, or

e. At any other time Juv not under immediate adult supervision

§ 938.342(1g)(d)

6) Order Juv to attend educational program under § 938.34(7d)

§ 938.342(1g)(e)

7) Order DWD to revoke, under § 103.72, permit under § 103.70 authorizing employment of the Juv

§ 938.342(1g)(f)

8) Order Juv to be placed in Teen Court Program if all the following apply

a. Chief Judge of district has approved a Teen Court Program established in Juv's Cty of residence and Ct determines that participation in the Teen Court Program will likely benefit Juv and community

b. Juv admits or pleads no contest in open Ct, with Juv's parent, guardian, or legal custodian present

c. Juv has not successfully completed participation in a Teen Court Program during the two years before date of alleged violation

§ 938.342(1g)(g)

9) Order the person to attend school

§ 938.342(1g)(h)

10) Impose a forfeiture of not more than $500 plus costs, subject to § 938.37

a. All or part of the forfeiture plus costs may be assessed against the person, parent or guardian of the person, or both

§ 938.342(1g)(i)

11) Order the person to comply with any other reasonable conditions that are consistent, including

a. Curfew

b. Restrictions as to going to or remaining on specified premises

c. Restrictions on associating with other Juvs or adults

§ 938.342(1g)(j)

12) Place a person under formal or informal supervision as described in § 938.34(2), for up to one year

§ 938.342(1m)(a)
§ 938.355(6m)(a)

13) Ct may, in addition to or instead of dispositions ordered in paras. 6)–12) above, order the person's parent, guardian, or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person, or both, if such a disposition is authorized by the municipal ordinance. BUT, Ct cannot impose a sanction on a Juv who is subject to an order that terminates when Juv attains 21 years of age

§ 938.342(1m)(b)

a. No order to any parent, guardian, or legal custodian may be entered until they are given an opportunity to be heard

b. Ct shall cause notice of time, place, and purpose of hearing to be served on the parent, guardian, or legal custodian personally at least 10 days before date of hearing

c. Parent, guardian, or legal custodian may be represented by counsel and may produce and cross-examine witnesses

§ 938.355(6m)(ag)

G. If Juv violates a condition of dispositional order for violation of municipal ordinance enacted under § 118.163(1m) (truancy), Ct may order as a sanction any combination of the following

1) Suspension or limitation on use of operating privilege defined in § 340.01(40) for not more than one year

§ 938.342(1g)(b)

2) Order the person to participate in counseling or supervised work program or other community service work as described in § 938.34(5g)

a. The cost of any such counseling, supervised work program or other community service work may be assessed against the person, parents or guardian of the person or both

§ 938.342(1g)(c)

3) Order person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship

a. Order may permit Juv to leave his/her home if accompanied by a parent or guardian

4) Any of the dispositions specified in § 938.342(1g)(d)–(k) and (1m), see **Secs. F.6)–13)** above

§ 938.355(6m)(b)

H. Motion for imposition of sanction under Sec. F. or Sec. G. above may be brought by person or agency primarily responsible for providing dispositional services to Juv, DA, Corp Counsel, or Ct that entered the dispositional order

St v Dylan S
(In Int of Dylan S)
2012 WI App 25
339 Wis. 2d 442

1) Written dispositional order is required for Ct to impose sanctions

§ 938.355(6m)(ag)

2) Any combination of sanctions may be imposed regardless of whether the disposition was imposed and order violated by Juv, if at dispositional hearing under § 938.335, Ct explained conditions to Juv and informed Juv of the possible sanctions or if before the violation, Juv acknowledge in writing that s/he read or had read to him/her those conditions and possible sanctions and that s/he understood those conditions and possible sanctions

3) If Ct initiates the motion, that Ct is disqualified from holding a hearing on the motion

4) Notice of motion shall be given to the Juv, GAL, counsel, parent, guardian, legal custodian, all parties present at original dispositional hearing

§ 938.355(6m)(am)1.

5) Municipal Ct may petition Ct to order placement in Juv detention facility or Juv portion of Cty jail for Juv who has violated municipal ordinance under § 118.163(2) who violates condition of dispositional order and if

a. At time of judgment, Municipal Ct explained conditions to Juv and informed Juv of possible sanctions, or

b. If before violation Juv has acknowledged in writing that s/he read or had read to him/her conditions and sanctions and that s/he understood conditions and possible sanctions

c. Ct shall order municipality to pay Cty cost for providing sanction imposed under § 938.355(6m)(a)1g.

d. Petition shall contain statement whether Juv subject to federal ICWA, and, if Juv may be subject to ICWA, names and addresses of Juv's Indian custodian, if any, and tribe, if known

§ 938.355(6m)(c)

6) Ct must hold hearing before imposing sanction

a. Burden of proof at sanction hearing is preponderance of the evidence

b. Juv subject to sanction has right to counsel at hearing

c. Juv may present evidence

d. Hearing shall be held within 15 days after filing of motion, except per § 938.355(6m)(bm) in certain cases involving Indian Juvs

§ 938.355(6d)
RMC Form JD-1770

11. Short-Term Detention for Violation of Order

A. Applies notwithstanding §§ 938.19– 938.21 but subject to any general written policies adopted by Ct under § 938.06(1) or (2) and to any policies adopted by Cty Bd relating to taking into custody and placement of Juv

§ 938.355(6d)(a)2r.

1) Juv who is subject to an order that terminates upon Juv attaining 21 years of age CANNOT be taken into custody

B. Applies to delinquent or JIPS who violates condition of Ct order

§ 938.355(6d)(a)2r.

1) Juv who is subject to an order that terminates upon Juv attaining 21 years of age CANNOT be taken into custody

§ 938.355(6d)(a)1., (c)1.

C. Short-term detention while alleged violation and appropriateness of sanction being investigated

1) Caseworker or any other person authorized to provide, or providing intake or dispositional services under § 938.067 or § 938.069 may, without a hearing, take Juv into custody and place delinquent in Juv detention facility or Juv portion of approved Cty jail or place delinquent or JIPS in place of nonsecure custody for not more than 72 hours while alleged violation and appropriateness of sanction being investigated

§ 938.355(6d)(a)2., (c)2.

D. Short-term detention for violation of delinquency or JIPS order

1) Caseworker or any other person authorized to provide or providing intake or dispositional services under § 938.067 or § 938.069 may, without a hearing, take Juv into custody and place delinquent in Juv detention facility or Juv portion of approved Cty jail or delinquent or JIPS in place of nonsecure custody for not more than 72 hours as a consequence of the violation

§ 938.355(6d)(a)2., (c)2.

a. Person taking Juv into custody shall permit Juv to make written or oral statement concerning possible placement and course of conduct for which Juv taken into custody

b. Person designated by Ct or Cty Dept who is employed in supervisory position shall review statement and approve placement, modify terms of placement, or order Juv released from custody

§ 938.355(6d)(a)3., (c)3.

2) Juv may be taken into and held in custody under both **Sec. C.** above and this section in connection with same course of conduct, except no Juv may be held in custody under both for more than a total of 72 hours in connection with same course of conduct unless Juv receives a hearing

§ 938.355(6d)(b)

E. Short-term detention for violation of condition of Cty aftercare supervision

1) If Juv on aftercare supervision violates a condition, caseworker or any other person authorized to provide or providing intake or dispositional services under § 938.067 or § 938.069 may, without hearing, take Juv into custody and place Juv in Juv detention facility or Juv portion of approved Cty jail for not more than 72 hours while alleged violation and appropriateness of revoking Juv's aftercare status being investigated

2) If Juv on aftercare supervision violates a condition, Juv's caseworker or any other person authorized to provide or providing intake or dispositional services under § 938.067 or § 938.069 may, without hearing, take Juv into custody and place Juv in Juv detention facility or Juv portion of approved Cty jail for not more than 72 hours as a consequence of the violation

a. Person taking Juv into custody shall permit Juv to make written or oral statement concerning possible placement and course of conduct for which Juv taken into custody

b. Person designated by Ct or Cty Dept who is employed in supervisory position shall review statement and approve placement, modify the terms of placement, or order Juv released from custody

3) Juv may be taken into and held in custody under both paras. 1) and 2) above in connection with same course of conduct, except no Juv may be held in custody under both for more than a total of 72 hours in connection with same course of conduct unless Juv receives a hearing

§ 938.355(6)(a)2m.

F. Conditions must have been explained to Juv by Ct at dispositional hearing and Juv informed of possible placement or before violation, Juv acknowledged in writing that s/he read or had read to him/her and that s/he understood conditions and that possible placement

§ 938.275(1)(c)

G. If Juv placed in Juv detention or place of non-secure custody, Ct shall order parents to con-tribute toward cost of placement the proportion of total amount that Ct finds parents able to pay

§ 938.355(6d)(e)

H. Use of placement in Juv detention facility or Juv portion of Cty jail under Secs. C., D., or E. above subject to adoption of Cty Bd resolution

§ 938.355(6g)

12. Contempt for Continued Violation of Order Under § 938.355(6g)

A. Juv may be found in contempt and delinquency disposition imposed when all the following conditions are met

1) Juv has been previously sanctioned under § 938.355(6)(a) or (6m) for violation of probation/supervision order

2) Juv has committed another violation of that probation/supervision order

3) At sanction hearing, Ct advised Juv of conditions of probation/supervision, possibility of a finding of contempt for violation and possible consequences of a finding of contempt

4) Violation is egregious

5) Less restrictive options have been considered and found to be ineffective

§ 938.355(6g)(c)

6) Person aggrieved by Juv's violation not precluded from proceeding against Juv for contempt of Ct under Ch 785

§ 938.355(6g)

B. Procedures for contempt

1) DA may file a petition under § 938.12 charging the Juv with contempt of Ct, as defined in § 785.01, and reciting the recommended disposition under § 938.34

2) DA may file petition on his or her own initiative or on request of the Ct that imposed condition or imposed sanctions order

a. If petition filed on request of Ct, that Ct is then disqualified from hearing contempt petition

3) Ct may find Juv in contempt and impose any disposition authorized under § 938.34

4) See **Sec. 13.C.** below for contempt proceedings predating Ch 938

§ 938.275(1)(c)

C. If Ct finds Juv in contempt and orders disposition under § 938.34, Ct shall order parents to contribute toward cost of disposition the proportion of total amount that Ct finds parents able to pay

13. Contempt Proceedings Under Ch 785

DLD v Circuit Ct
(In Int of DLD)
110 Wis. 2d 168 (1983)

A. Child/Juv, parent, AEM may be found in contempt for noncompliance with Ct order

TJN v
Winnebago Cty DSS
(Contempt in Int of TJN)
141 Wis. 2d 838
(CA 1987)
BLP v Circuit Ct
(In re BLP)
118 Wis. 2d 33 (CA 1984)

1) Ct must follow procedures in Ch 785—Contempt of Ct

B. If remedial sanction sought to terminate continuing contempt

1) Person aggrieved by contempt, not Ct, must file motion with Ct

2) Ct must give opportunity to purge contempt by satisfying conditions in order

3) If failure to purge

a. Necessary to hold another hearing before contemnor sent to secure custody

b. Ct must take best interests of child into consideration

C. If punitive sanction sought to punish past contempt

1) Complaint must be filed by DA, AG, or special prosecutor appointed by Ct

a. Ct may request filing of complaint

Comment

2) Supreme Ct states procedures applicable to adjudication of delinquency are appropriate

a. Although Ch 785 states criminal procedures under Chs 967–973 are to be used

TJN v
Winnebago Cty DSS
(Contempt in Int of TJN)
141 Wis. 2d 838
(CA 1987)

D. Holding child in contempt for failing to attend school under CHIPS disposition and ordering child to be held in secure detention but allowing opportunity to purge contempt by attending school regularly from detention is not remedial but amounts to a punitive sanction

1) Child entitled to due process

2) DA must file complaint

3) If contempt based on truancy from school, Ct must consider evidence under § 118.16(5) before entering finding of contempt

VG v St (In Int of VG)
111 Wis. 2d 647
(CA 1983)

E. Ch

785 finding of contempt is not basis for adjudication of delinquency

CS v Racine Cty
(Contempt in Int of JS)
137 Wis. 2d 217
(CA 1987)

F. Under CHIPS order, Juv Ct cannot enforce participation in inpatient treatment program by a parent through contempt

1) Appropriate sanction is termination, suspension, limitation, or supervision of adult's relationship with child

Note
§ 48.347(6)(a)

2) Under UCHIPS, Ct has authority to place EM in inpatient treatment program

§ 938.533

14. Corrective Sanctions

A. Components

1) Juv Offender Review Program (JORP) in Division of Juv Corrections in DOC shall evaluate and select participants from Juv correctional facility placements

2) Participant placed in community under intensive surveillance with community-based treatment services

3) DOC shall make intensive surveillance available 24 hours a day, 7 days a week, including use of electronic monitoring

4) Participant remains under supervision of DOC and is considered in custody as defined in § 946.42(1)(a)

B. If violation occurs

1) If Juv violates condition, DOC may, without hearing, take Juv into custody and place Juv in Juv correctional facility or return Juv to placement in Type 1 Juv correctional facility or secured RCCCY

§ 938.533(3m)

2) If Juv runs away from placement in community, Juv considered to have escaped in violation of § 946.42(3)(c)

15. Revocation of Community Supervision or Aftercare Supervision

§ 938.357(5)

A. No prior notice of revocation required

B. Juv on community supervision status may be taken into custody only as provided in §§ 938.19–938.21 or § 938.533(3)(a)

C. Juv on aftercare status may be taken into custody only as provided in §§ 938.19–938.21 and § 938.355(6d)(b)

1) See **JV 4** for procedure

D. DOC or whoever has been designated as aftercare provider under § 938.34(4n) may revoke through a hearing before DOA

§ 938.357(5)(c)

E. Juv has right to counsel

F. Hearing conducted by division of hearings and appeals in DOA within 30 days after Juv taken into custody

G. Review of revocation decision by certiorari to sentencing Ct

§ 938.357(6)

H. Revocation may NOT extend expiration date of original dispositional order

§ 938.355(4m)(a)
RMC Form JD-1781

16. Expungement

A. Juv adjudged delinquent under § 48.12, 1993 Stats., or § 938.12 may, on attaining 17, petition to expunge Ct's record of adjudication

St v Ozuna
2017 WI 64
376 Wis. 2d 1

1) Subject to **Sec. B.** below, Ct *may* expunge record if Ct determines that Juv has satisfactorily complied with conditions of dispositional order and that Juv will benefit and society will not be harmed by expungement

a. 2005 Wis Act 344 supersedes *St v Jason JC*, 216 Wis. 2d 12 (CA 1997), so Juv adjudicated delinquent for offense committed before July 1, 1996, may also request expungement

Comment

2) Statute provides for no time period by which Juv may petition Ct

Comment

3) Applies to felony and misdemeanor offenses

Wis Const art. I,
§ 9m(2)(p)
(Marsy's Law)

4) Victim needs to be notified

§ 938.355(4m)(b)

B. Ct *shall* expunge Ct record of adjudication if it was Juv's first adjudication based on violation of § 942.08(2)(b), (c), or (d) (Peeping Tom offenses) or (3) ("upskirting"), and Ct determines Juv has satisfactorily complied with conditions of dispositional order

1) Notwithstanding § 938.396(2), Ct shall notify DOC of expungement

JV 12: RECORDS/VICTIMS' RIGHTS

1. Law Enforcement Records

§ 48.396(1)
§ 938.396(1)(a)

A. Children's/Juv's records must be kept separate from records of adults

1) Includes records relating to adult expectant mothers (AEM), which must be kept separate from records of other adults

B. Children's/Juv's records, including records relating to expectant mothers (EM), must not be divulged except those in 1.D.–L., *infra*, and

1) By Ct order

§ 48.293(1)
§ 938.293(1)
§ 938.396(2m)(c)1p.

2) Copies of all law enforcement reports must be made available upon request to Atty or GAL and CASA before plea hearing

a. Includes officers' memoranda and witnesses' statements

b. Available through prosecutor

c. Juv through Atty or GAL only party to have access to reports when child/Juv alleged to have committed delinquent act, violated a civil law or ordinance, or alleged JIPS under § 938.13(12)

§ 905.10

d. Identity of informant may be withheld

§ 48.293(2)
§ 938.293(2)

3) All records relating to child/Juv/UC/EM relevant to proceeding must be open to inspection to Atty or GAL for any party and CASA upon demand and presentation of releases when necessary at least 48 hours before hearing

a. May obtain copies with permission of records custodian or Ct

b. Ct may require that specific items not be disclosed to child/Juv/EM or parent if reasonably believes disclosure would be harmful to interests of child/Juv/UC

§ 48.293(3)
§ 938.293(3)

c. Upon request, before fact-finding hearing, counsel or GAL may view any audiovisual recording of oral statement of child/Juv

§ 48.396(1)
§ 938.396(1)(b)1.

4) Representatives of newspapers or other reporters of news may inspect records

a. For purpose of reporting news

b. Cannot reveal identity of child/Juv/AEM

§ 48.396(1)
§ 938.396(1)(b)5.

5) Records of Juvs 10 or older subject to Adult Ct jurisdiction are not confidential

§ 938.293(2)
§ 971.23

C. GAL or Atty in delinquency proceeding may use criminal discovery devices except that Ct will establish timetable for certain required disclosures, including

§ 971.23(1)(d),
(2m)(a)

1) List of witnesses

§ 971.23(8)

2) Notice of alibi

§ 971.23(1)(bm)

3) One-party consent recordings

4) Audiovisual recording of child's statement

TMJ v St
(In Int of TMJ)
110 Wis. 2d 7
(CA 1982)

5) Before waiver hearing, Juv does not have broad discovery rights

§ 48.396(1)
§ 938.396(1)(b)2.–4.

D. Confidential exchange of information permitted between police and

1) School attended by child/Juv, including tribal school (subject to enforceable protections under tribal school policy or tribal law)

2) Other law enforcement agencies

3) Social welfare agencies

§ 938.396(1)(c)5.

E. If requested by victim, law enforcement may, subject to official agency policy, disclose to victim any information in its records relating to injury, loss, or damage suffered by victim

1) Information may be used only for purpose of investigating claim arising out of act or recovering for loss

2) May disclose name and address of Juv and parents

§ 938.396(1)(c)7.

3) If Juv ordered to pay restitution and has failed to do so within one year after entry of restitution order, victim's insurer may request law enforcement to disclose to insurer any information in records relating to loss, injury, or damage suffered by victim, including name and address of Juv and parents. Disclosure subject to official agency policy

§ 938.396(1)(c)8.

F. If requested by fire investigator, law enforcement agency, subject to official agency policy, may disclose information and records necessary for arson investigation

§ 938.396(1)(c)6.

G. If requested by victim-witness coordinator, law enforcement shall disclose any information in records relating to "enforcement of rights under constitution, this chapter, and § 950.04 or the provision of services under § 950.06(1m)"

1) May use information only for the purpose of enforcing those rights or providing those services

2) Victim-witness coordinator may disclose name and address of Juv and Juv's parents to victim

§ 938.396(1)(c), (d)

H. At request of administrator (or designee) of school district, private school, or tribal school, or on own initiative, law enforcement agency may disclose any information in records relating to the following (if official agency policy specifies that the information may not be provided to tribal school administrator or designee unless tribal school's governing body agrees that information will be used by the tribal school as provided in § 118.127)

§ 938.396(1)(c)3.a.

1) Use, possession, or distribution of drugs or alcohol by a pupil enrolled in public school district, private school, or tribal school

a. Information may only be used as provided in § 118.127

§ 938.396(1)(c)3.c., d.

2) The act for which a Juv enrolled in public school district, private school, or tribal school was adjudged delinquent or act for which Juv taken into custody

a. Information may only be used as provided in § 118.127

§ 938.396(1)(c)3.b.

3) Illegal possession of a dangerous weapon by a Juv, subject to official agency policy

§ 938.396(1)(c)4.
§ 938.78(2)

4) Law enforcement or child welfare agency may enter into interagency agreement for routine disclosure of information set forth above in **Sec. 1.H.**1), 2) & 3) to schools, other child welfare agencies, or other law enforcement agencies

§ 938.396(1)(d)
§ 118.125(1)(d),
(2), (2m)

5) Upon petition of law enforcement agency or fire investigator, Ct may order school to disclose pupil records (other than those that may be disclosed without a Ct order) necessary for investigation of alleged delinquent or criminal conduct

a. May be used only for purposes or investigation and disclosed only to employees involved in investigation

§ 48.396(1b)
§ 938.396(1)(c)1., 2.

I. If requested by parent, guardian, or legal custodian of child/Juv/CEM who is subject of report, or child/Juv/CEM, if he or she is 14 or over, or if requested by UC's GAL, law enforcement may provide copy of that report

1) Subject to agency policy

Comment
see § 48.981(7)

2) Disclosure of identity of reporter in child abuse or neglect is prohibited in order to comply with child abuse reporting requirements and to protect (unborn) child

§ 48.396(1d)
§ 938.396(1)(c)2.

3) With written permission of parent, guardian, or legal custodian of child/Juv/CEM who is subject of report, or child/Juv/CEM if 14 or over, or UC's GAL, law enforcement may, subject to official agency policy, provide specifically identified reports to person named in permission

§ 48.396(6)
§ 938.396(10)

J. Police (and Ch 48 and Ch 938 Ct) records shall be open for inspection for use in prosecution or evaluation of Ch 980 proceedings by DOC, DHS, DOJ, or DA

1) Ch 980 Ct may issue protective orders regarding use and disclosure of records

§ 48.396(5)
§ 938.396(1j)

K. Any person denied access to police records (including parent, child/Juv/CEM, UC's GAL, legal custodian, or person with written permission of those individuals, victim-witness coordinator, school district administrator, victim, and victim's insurer) may petition Ct for release of police records

1) Petition must describe information sought; reason it is being sought; basis for belief that information is in the records; relevance of information to reason for requested disclosure; efforts to secure information from other sources

2) Ct must notify child/Juv, parent, legal counsel, law enforcement agency, EM, and UC's GAL

a. If any person objects, Ct may hold hearing on need for disclosure

§ 938.396(1j)(bm)

3) If school official denied access to police records petitions Ct for access to records relating to alcohol/drug use, possession, or distribution, possession of dangerous weapon, or act for which Juv was taken into custody or adjudged delinquent

a. Ct may conduct inspection without notice and disclose if warranted under the factors in para. 4)a. below

b. If disclosure is ordered, copy of disclosure order must be served on law enforcement agency, Juv, Juv's Att'y, and Juv's parents

c. Ct must hold hearing on request only if party served files motion to set aside disclosure order within 10 days

4) Ct shall inspect records (inspection may be in camera) and if good cause is shown and information cannot be obtained with reasonable efforts from other sources, Ct shall determine whether petitioner's need for information outweighs confidentiality interest

§ 938.396(1j)(c)

a. Under Ch 938, balance petitioner's interest in recovery of loss against Juv's interest in rehabilitation and avoiding stigma and balance public interest in redress of wrong through litigation against interest in protecting the integrity of Juv justice system

- If school official seeking access to police records relating to alcohol/drug possession, use, or distribution, possession of dangerous weapon, or act for which Juv taken into custody or adjudged delinquent, consider petitioner's legitimate educational interests, including safety, against society's interest in protecting confidentiality

§ 48.396(5)(c)

b. Under Ch 48, balance petitioner's interest in access to record against child's/EM's interest in avoiding stigma

5) Order disclosure only of information necessary

6) Ct must record reasons for permitting or denying access

§ 301.46(2)

L. Police chief or sheriff may release sexual offender registration information relating to a child, Juv, or adult whose reporting requirement arises from a Ch 48 or 938 proceeding

Breier v EC
(In Int of EC)
130 Wis. 2d 376 (1986)

M. Trial Ct may not order expungement of Juv police records

1) Ct has no statutory, inherent, or equitable authority to expunge police arrest records

2. Court Records—Non-electronic

§ 48.396(2)(a)
§ 938.396(2)(a)
§ 938.17(2)

A. Juv and Municipal Ct records must be entered in books and kept in files for that purpose only

§ 938.396(2)(a)

B. Files open to inspection or disclosed only by Juv Ct order EXCEPT

§ 48.396(2)(b)
§ 938.396(2g)(b)

1) Upon request of DCF, DOC, or federal agency, Ct shall open files for inspection and copying for purposes of those agencies monitoring and conducting periodic evaluations of activities under 45 CFR pt. 1355, 45 CFR pt. 1356, and 45 CFR pt. 1357. Upon request of an entity engaged in the bona fide research, monitoring, or evaluation of activities under 42 USC 629h, as determined by the Director of State Cts, Ct shall open records for inspection and copying. Records shall be kept confidential and may be used and disclosed only for purpose requested

§ 938.396(2g)(c)

2) Upon request of law enforcement, Ct shall open records for purposes of investigating alleged criminal activity or activity that may result in Ct exercising jurisdiction under § 938.12 or § 938.13(12)

a. Open records for inspection by authorized representative of the requester the record of the Ct relating to any Juv who has been the subject of a proceeding under Ch 938

§ 938.396(2g)(d)
§ 48.396(2)(e)

3) Ct shall open records for inspection by authorized representative of requester of any Juv who has been subject of Ch 938/Ch 48 proceeding

a. Upon request of Criminal Ct to review Ct records to conduct or prepare for a proceeding in that Ct

b. Upon request of DA to review Ct records to perform his/her official duties in Criminal Ct

c. Upon request of Civil Ct or Atty for party in civil action to inspect records for purposes of impeaching a witness

§ 938.396(2g)(j)

d. Upon request of fire investigator for records relating to Juv found to have committed fire-related offense

§ 938.396(2g)(em)

e. Upon request of DOC to review Ct records to ensure compliance with sex offender registration requirement

§ 938.396(2g)(dm)

4) Upon request of defense counsel to review records to prepare defense to a delinquency or criminal charge, Ct shall disclose records for that purpose

§ 48.396(2)(dr)
§ 938.396(2g)(dr)

5) Upon request of DOC to inspect for presentence investigation, Ct shall open records for inspection

St v Moore
2006 WI App 162
295 Wis. 2d 514

a. If Def in criminal proceeding asserts that information in PSI report contains inaccurate information about nature of Def's Juv Ct contacts, Criminal Ct must conduct in camera inspection of confidential Juv records to ensure accuracy of information

§ 48.396(2)(g)
§ 938.396(2g)(gm)

6) Upon request of Ct assigned to exercise jurisdiction under Ch 48 or 938, any Municipal Ct exercising jurisdiction under § 938.17(2), or DA, Corp Counsel, City/Village/Town Atty for any proceeding, or upon request of any Atty or GAL in proceeding in Ct from which records are requested, Ct shall open records for inspection

a. Municipal Ct must also authorize release of Municipal Ct records

§ 48.396(2)(g)
Courtney F v Ramiro MC (In re TPR to Caleb JF)
2004 WI App 36
269 Wis. 2d 709

b. Wis Ct of Appeals held that release of respondent-parent's Juv Ct or social service records to GAL for parent's child in TPR on ex parte request was in error

Courtney F v Ramiro MC (In re TPR to Caleb JF)
2004 WI App 36, ¶ 2 n.3
269 Wis. 2d 709

NOTE: However, at n.3, Ct of Appeals implied that amendment to § 48.396(2)(g) (in 2003, after entry of underlying TPR orders) might authorize ex parte release.

§ 938.396(2g)(f)

7) Upon request of victim-witness coordinator to review records to enforce victim/witness rights, Ct shall disclose records only for those purposes

a. Including name and address of Juv and Juv's parents, which may further be disclosed to victims

§ 938.396(2g)(fm)

8) Upon request of victim's insurer, Ct shall disclose the amount of restitution ordered

§ 48.396(2)(ag), (aj)
§ 938.396(2g)(ag)

9) Upon request of parent, guardian, or legal custodian, or, if 14 or over, child/Juv/EM who is subject of record, or upon request of UC's GAL, Ct records shall be opened for inspection by that person. If record requested from Municipal Ct exercising jurisdiction under § 938.17(2), Municipal Ct shall also authorize inspection

a. Unless Ct, after notice and hearing, finds disclosure would result in imminent danger to anyone

§ 48.396(2)(am), (ap)
§ 938.396(2g)(am)

b. May disclose to requester who has permission of person identified above to see specific records identified in written permission unless Ct finds, after due notice and hearing, that inspection would result in imminent danger to anyone

§ 48.396(2)(dm)
§ 938.396(2g)(g)

10) Upon request of a Ct conducting an action affecting the family, an Atty with a child support enforcement agency, the Atty for a party or a party him/herself, or a GAL for a child/Juv involved in a paternity proceeding, Ct shall open its records or disclose to requester the information in those records relating to paternity of the child/Juv

a. Information may be used to establish paternity or to rebut the presumption of paternity

§ 48.396(2)(h)
§ 938.396(2g)(h)

b. Ct in action affecting family or Atty or GAL for such action may inspect records for purpose of custody determination

§ 938.396(2g)(h)

- Municipal Ct must also release its records to parties in para. b., *supra*, for same purpose

§ 906.09(1)–(3)

11) Adjudication of delinquency may be admissible for purposes of attacking a witness's character for truthfulness, subject to § 906.09 and § 901.04

Davis v Alaska
94 S. Ct. 1105 (1974)
St v Gustafson
119 Wis. 2d 676 (1984)
Bellinder v St
69 Wis. 2d 499 (1975)

a. Other Juv Ct records not admissible to impeach testimony of witness, except to protect a Def's right to confrontation when specific claims of bias or prejudice could be supported

§ 938.396(2g)(k), (L)

12) Records of Juv (except psychiatric reports or other records with sensitive personal information) may be inspected by any person if Juv alleged to be SJO or alleged to have committed a felony and has prior delinquency finding

a. Person may "further disclose" information to anyone

§ 938.396(2g)(m)

13) Ct Clerk shall notify school (public school board or governing body of private school or tribal school)

a. If delinquency or JIPS petition is filed alleging a felony, that petition has been filed and the nature of the charge

- If no finding of delinquency, notify of dismissal

b. Within 5 days after adjudication of delinquency (does not include JIPS adjudication), that Juv has been found delinquent, nature of the offense and disposition, including, if applicable, statement that school attendance is a condition of the order and a statement, if applicable, that adjudication was for a gang crime

- If Municipal Ct order requires school attendance, Municipal Ct clerk must notify school

§ 938.342(1r)

c. Ct order shall specify what constitutes a violation of school attendance requirement and direct school to notify Ct or supervising agency within 5 days after any violation

§ 938.396(2g)(m)5.

d. If dispositional order results in placement of Juv in new school district, private school, or tribal school, same information must be supplied to new district or school. New school district or school must also be advised of any previous delinquency adjudications, the nature of the offenses, and the dispositions imposed

§ 938.396(2g)(m)6.

e. School district or private school "shall" disclose information to employees who work directly with the Juv or who have legitimate educational or safety interests

NOTE: If information is disclosed to governing body of tribal school, Ct must request that tribal school's governing body (or designee) disclose information to employees who work directly with Juv or who have legitimate educational or safety interests.

§ 938.396(2g)(m)6.

f. School board may not use information from Juv's Ct records as the sole basis for expulsion, suspension, or other discipline (but may use information as sole basis for taking action against Juv under school district's athletic code)

§ 48.375(7)(e)

14) Records relating to waiver of parental consent for abortion can only be disclosed for the purposes set forth in that statute

§ 938.396(2g)(n), (o)

15) Must notify DOJ of felony adjudication (for firearms-restrictions records searches and for concealed-weapon-license background checks) and of "serious crime" adjudication (for foster care licensure records check)

§ 938.355(4m)
RMC Form JD-1781

C. Juv adjudged delinquent may, on attaining age 17, petition Ct to expunge records

1) Ct may grant petition if Juv satisfactorily complied with conditions of dispositional order, society would not be harmed, and Juv would benefit

St v Jason JC
(In Int of Jason JC)
216 Wis. 2d 12
(CA 1997)

2) Only applies to offenses committed on or after July 1, 1996

D. Confidentiality of traffic offenses

1) No confidentiality for violations of Chs 340–349, Ch 351, or counterpart ordinances

§ 938.396(3)

2) Confidentiality for the following violations

§ 342.06(2)

a. False statement in application for certificate of title for vehicle subject to registration

§ 344.48(1)

b. Forged proof of financial responsibility regarding automobile liability policy or bond

§ 346.67(1)

c. Violation of duty upon striking person or attended or occupied vehicle when death or injury occurs

§ 30.67(1)

d. Violation of duty when involved in a boating accident and death or injury occurs

§ 938.396(4), § 938.17(2)
§ 938.237, § 938.34(8)
§ 938.343(2)
§ 938.344(2), § 346.93

3) If Ct (including Municipal Ct) revokes, suspends, or restricts Juv's operating privilege, DOT can only release information to

a. Ct

b. DA

c. Corp Counsel

d. City, village, or town Atty

e. Law enforcement agency

f. Juv or Juv's parent or guardian

g. Driver's licensing agency of another state

§ 938.35(1)

E. Disposition and evidence given in Juv Ct hearing not admissible as evidence against Juv in any other Ct except

1) For purposes of presentence investigation and report after conviction in Adult Ct

a. But see § 972.14(2) regarding duty of Criminal Ct to inquire of Def under age 21 of sentencing regarding prior delinquency adjudication when no presentence ordered

2) In a proceeding in Juv Ct

3) In Family Ct when Judge considering custody of children

4) For setting bail or impeaching a witness in Criminal or Civil Ct

§ 854.14(5)

5) Fact Juv adjudged delinquent for intentionally killing the decedent is admissible for inheritance determination

§ 938.396(2g)(i)

a. Probate Ct or Attys and litigants may inspect Ct records regarding delinquency adjudication for intentionally killing a person

6) In hearing, trial, or other sexually violent person proceeding under Ch 980

§ 48.35(2)
§ 938.35(2)

F. Ct may disclose any information if in best interest of child/UC/Juv or administration of justice, except when specifically prohibited

St v Bellows
218 Wis. 2d 614
(CA 1998)

G. When State seeks to use information obtained from "Juv file" and objection made to procedure used to obtain information, Trial Ct must determine from record if proper procedure followed by Juv Ct

§ 48.396(3)(b)1.
§ 938.396(2m)(b)1.

3. Court Records—Electronic

A. Ct shall make information relating to a proceeding under Ch 938 and Ch 48 that is contained in electronic records of the Ct available to:

1) Any other Ct assigned to exercise jurisdiction under Ch 48/Ch 938

2) Municipal Ct exercising jurisdiction under § 938.17(2)

3) Ct of criminal jurisdiction

4) Person representing interests of public under § 48.09 or § 938.09

5) Atty or GAL of parent or child

6) DA prosecuting a criminal case

7) Law enforcement agency

8) DCF/DOC

9) Cty Dept

B. Limitations on Disclosure

§ 48.396(3)(b)2.
§ 938.396(2m)(b)2.

1) Secs. 48.396(3)(b)1. and 938.396(2m)(b)1. do not authorize disclosure of any information relating to an individual's physical or mental health or that deals with any personal sensitive matter, except with informed consent, by Ct order, or as otherwise permitted by law

§ 48.396(3)(c)1r.
§ 938.396(2m)(c)1r.

2) DCF/DOC or Cty Dept shall keep any information made available to it confidential, and may use or allow access to that information only for the purpose of providing services

§ 48.396(3)(c)1g.
§ 938.396(2m)(c)1g.

3) Ct assigned to exercise jurisdiction under Ch 48 and Ch 938, Municipal Ct or Ct of criminal jurisdiction may use or allow access to that information only for the purpose for conducting or preparing for a proceeding in that Ct

§ 48.396(3)(c)1m.
§ 938.396(2m)(c)1m.

4) Persons representing the interest of the public under § 48.09 or § 938.09, an Atty or GAL for parent or child/Juv, or a DA prosecuting a criminal case may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a Ct

§ 48.78, § 938.78

4. Agency Records

A. Includes records or information regarding individuals in their care or custody received by

1) DCF/DOC

2) Cty Dept providing child welfare services

3) Licensed child welfare agencies

4) Licensed child care centers

§ 48.78(2)
§ 938.78(2)

B. Information may only be disclosed by Ct order or as provided by statute

St v Bellows
218 Wis. 2d 614
(CA 1998)
Rock Cty DSS v DeLeu
(In Int of KKC)
143 Wis. 2d 508
(CA 1988)

1) Juv Ct, not Criminal Ct, has discretion to determine whether confidential agency records should be disclosed or made available for inspection

a. Exercise of discretion may not be delegated

Pennsylvania v Ritchie
107 S. Ct. 989 (1987)

b. However, if motion made in Criminal Ct for in camera review of agency records based on preliminary showing that records contain evidence material to defense, Criminal Ct must order records produced for in camera review

- Def has no right to search records in unsupervised fashion to determine whether they include exculpatory evidence

St v Johnson
2023 WI 39
407 Wis. 2d 195

c. Def has no right to in camera review of victim's privately held, otherwise privileged health records

§ 48.371
§ 938.371

2) Substitute care provider, including relative caregiver, must be advised of HIV, hepatitis B, or disabilities (mental, emotional, cognitive, etc.); information relating to the child/Juv and in agency records, including records of gang activity, involvement of child/Juv in activities harmful to child's/Juv's physical, mental, and moral well-being, and involvement of child/Juv as perpetrator or victim in prohibited sexual activity; and necessary medical information

a. Disclosed information must be kept confidential by those individuals

§ 48.78, § 938.78

3) Confidentiality statute does not apply to

§ 48.78(2)(b)
§ 938.78(2)(b)

a. Confidential exchange of information between an agency and other social welfare or law enforcement agencies, health-care providers, or school/tribal school officials regarding individuals in their care or custody

- Agencies otherwise must keep information confidential

- Under § 938.78(2)(b), other exceptions to the statute include confidential exchanges between an agency and a victim-witness coordinator or between an agency and a fire investigator

§ 48.78(2)(i)
§ 938.78(2)(i)

b. Disclosure of information by agency to relative of child/Juv placed outside home to facilitate establishment of a relationship or placement of child/Juv with the relative

§ 48.78(2)(j)

c. Disclosure of information to public or private agency investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the person's home

§ 48.78(2)(c)

d. Use by DCF or Cty Dept of picture or description of child in their guardianship in the media for purpose of finding adoptive parents

§ 48.78(2)(d)
§ 938.78(2)(d)

e. Release of information to DOC about person who had been Juv in legal custody of DHS if person is

- Subject of presentence investigation
- Under sentence to Wis prison
- Subject to an order under § 938.183 (original adult Ct jurisdiction) and placed in prison
- On probation to DOC
- On parole or extended supervision

§ 48.78(2)(g)
§ 983.78(2)(g)

f. Disclosure of information in records to examining or credentialing bds or agencies to facilitate credentialing investigation or investigation of misconduct by credentialed individual

§ 938.78(3)

g. Release of Juv's name and necessary identifying information if Juv adjudged delinquent for specific offenses and escaped from Juv correctional facility or corrective sanctions placement or left for longer than authorized

- For protection of public or
- To secure Juv's return to facility

§ 48.48(17)(bm)
§ 48.57(2m)
§ 938.57(2m)

h. If Cty Dept (or DCF in Ch 48 case, in Cty with population of 750,000 or more) learns that person receiving child welfare services has changed his or her Cty of residence, notice of change must be provided to Cty Dept (or DCF, in Ch 48 case, if new Cty has a population of 750,000 or more) in new Cty of residence

§ 48.78(2)(e)
§ 983.78(2)(e)

i. Information in agency records requested by DOC, DHS, DOJ, or DA for use in Ch 980 proceeding

§ 48.78(2)(k)

j. Disclosure by DCF to Dept of Revenue of information regarding recipient of kinship care payments or foster care payments, including information contained in electronic records, solely for purpose of administering state taxes

§ 48.78(2)(ag)
§ 938.78(2)(ag)

4) Agency bound by §§ 48.78 and 938.78 may disclose contents of record to parent, guardian, or custodian, or to child/Juv 14 or over, who is subject of record

§ 48.78(2)(aj)

a. May also disclose to parent, guardian, legal custodian, EM, or UC's GAL on request of parent, guardian, legal custodian of CEM, EM, or UC's GAL

§ 48.78(2)(am), (ap)
§ 938.78(2)(am)

b. May also disclose to person who has written permission of person identified in paras. 4) or a. above, to disclose specifically identified records or portions of records

§ 48.78(2)
§ 938.78(2)(ag), (am)

c. Agency may refuse to disclose if determines dis–closure would result in imminent danger to anyone

§ 48.981

d. May not disclose identity of (unborn) child abuse reporter

Peter B v St
(In Int of Peter B)
184 Wis. 2d 57
(CA 1994)

5) Ct has broad discretion to authorize disclosure of information in agency files for the protection of the public, including disclosure of name and photograph to assist in apprehending child/Juv wanted on warrant

Comment

a. Decision would appear to justify Ct order for disclosure of information in Ct and police records as well

§ 48.78(2)(h)
§ 938.78(2)(h)

6) Records may be entered into the statewide (eWiSACWIS) system. Agency may confidentially provide records to Ct information system (CCAP)

§ 48.78(2)(i)
§ 938.78(2)(i)

7) Agency may disclose information to relative of a child/Juv in out-of-home placement to facilitate establishment of relationship between child and relative or placement with relative

§ 48.78(2)(j)

8) May disclose information to agency investigating person for foster care license or adoptive placement

5. Confidentiality and Victims' Rights

NOTE: References are primarily to Chs 48 and 938 and to Wis. Const. art. I, § 9m (Marsy's Law). Judge should also review provisions of Ch 950 relating to victims' rights

NOTE: For background information on Marsy's Law generally (and not specifically related to juveniles), see Memorandum from Amber Peterson, Legal Advisor, Wis. Office of Court Operations, to Judges, Court Commissioners, Clerks of Circuit Court, Juvenile Clerks, and District Court Administrators (May 12, 2020), http://

courtnet.wicourts.gov/policies/docs/marsyslaw.pdf, and David Perlman, Perlman's Pearl—Marsy's Law Amendment to the Wisconsin Constitution (Apr. 24, 2020), http://courtnet.wicourts.gov/education/oje/docs/marsyslawsynopsis.pdf.

A. Legislative intent and philosophy

§ 938.01(2)(g)
§ 950.04–.055

1) Consistent with confidentiality and other provisions of Ch 938, to ensure that victims and witnesses of acts committed by Juvs are afforded same rights as victims and witnesses of adult crimes

a. Ensure that victims and witnesses are treated with dignity, respect, courtesy, and sensitivity

§ 938.31(2), § 967.04

b. If child victim or witness

- Ct may order taking of deposition taken by audiovisual means, and

§ 971.105

- Ct and DA must expedite proceedings in order to minimize length of time child must endure stress of his/her involvement in the proceeding

§ 938.315(2)

c. Continuances may only be granted after consideration of victims' interests and public interest in prompt disposition of cases

§ 938.245, § 938.32
§ 938.34(5)

d. Well-being and needs of the victim must be considered in determining restitution conditions of a deferred prosecution, consent decree, or delinquency dispositional order

B. Definition of Victim

Wis Const art I,
§ 9m(1)(a)1.

1) A person against whom an act is committed that would constitute a crime of committed by a competent adult

Wis Const art I,
§ 9m(1)(a)2.

2) If the person under subd. 1. is deceased or is physically or emotionally unable to exercise his or her rights under this section, the person's spouse, parent, or legal guardian, sibling, child, person who resided with the deceased at the time of death, or other lawful representative

Wis Const art I,
§ 9m(1)(a)3.

3) If the person under subd. 1. is a minor, the person's parent, legal guardian or custodian, or other lawful representative

Wis Const art I,
§ 9m(1)(a)4.

4) If the person under subd. 1. is adjudicated incompetent, the person's legal guardian or other lawful representative

Wis Const art I,
§ 9m(1)(b)

5) "Victim" does not include the accused or a person who the Ct finds would not act in the best interests of a victim who is deceased, incompetent, a minor, or physically or emotionally unable to exercise his or her rights under Wis. Const. art. I, § 9m

C. Representation of Victim

If the Ct determines that a person representing a victim will not act in the victim's best interest, the Ct will have to appoint a GAL or other appropriate person to represent the victim's best interests

Wis Const art I,
§ 9m(2)(b)

D. Victims shall be entitled to the right of privacy

1) The exact definition and extent of this right to privacy are unclear

2) If parties are seeking to protect a Ct record not protected under statute, they should file a motion to seal or redact

3) Victims' addresses are to be held confidential in Ct files

St v Johnson
2023 WI 39
407 Wis. 2d 195

4) Def has no right to in camera review of victim's privately held, otherwise privileged health records

E. Confidentiality and victim access to hearings

§ 938.299
§ 48.16, § 938.17

1) General public shall be excluded from hearings under Ch 938, including hearings in Municipal Ct and on petitions for waiver of parental consent for abortion

a. Unless Juv, through counsel, demands public hearing

§ 938.299(1)

- Ct shall refuse to grant a public hearing if victim of an alleged sexual assault objects or, in a nondelinquency case, if parent or guardian objects

2) If public hearing not held, only parties, their counsel, Juv's foster parent or relative/guardian who has physical custody, witnesses, victim, a representative of the news media for purpose of reporting news without revealing the identity of the Juv, and other persons requested by a party and approved by the Ct may be present

a. Ct may exclude foster parent or other physical custodian under § 48.62(2) from portions of hearing dealing with sensitive personal information concerning the Juv or family

§ 938.299
§ 48.375

b. Except in waiver of parental consent for abortion cases, Ct may admit any other person Ct finds to have a proper interest in the case or the workings of the Ct, including a member of the bar or a person engaged in the bona fide

research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by Director of State Cts

§ 938.299(1)(am)

3) However, victim of a Juv's delinquent act or alleged act may attend any hearing under Ch 938

See also § 950.045

a. Member of victim's family may also attend a hearing under § 938.299(1), as well as representative of an agency providing support services to victim, if victim so requests

§ 938.27(4m)

b. DA or Corp Counsel must make reasonable efforts to notify any victim or alleged victim of Juv's act or a member of family of homicide victim of right to receive notice of any hearing under Ch 938. DA or Corp Counsel must supply notice if requested

§ 938.299(1)(ar)
Appendix 1
SJO Offenses

4) Notwithstanding general rule that hearings are closed, public may attend any hearing for a Juv accused of a felony who has previously been adjudicated delinquent or for Juv accused of SJO Offense as defined in **Appendix 1**

a. General public must be excluded if victim of sexual assault objects

b. Ct may exclude general public from portions of hearing dealing with sensitive personal matters unrelated to delinquent act

§ 938.299(1)(av)

c. If public hearing, any person may disclose to anyone information obtained at hearing

§ 938.335(3m)

5) If Juv found delinquent or JIPS under § 938.13(12), at dispositional hearing, Ct shall determine whether victim wants to make statement to Ct and allow victim or family member of homicide victim to make oral statement or provide written statement

§ 938.30(4m)

a. Before accepting admission or imposing disposition, Ct shall inquire of DA or Corp Counsel whether reasonable attempts were made to advise victims of right to notice of hearings and right to make statement at disposition

- Failure of DA or Corp Counsel to make reasonable attempt to do so not a basis to challenge validity of dispositional order

b. Ct may also allow other individuals to make statement

c. Statements must be relevant to disposition

§ 938.299(1)(b)

6) Except as provided in § 938.396, anyone, including a victim, who discloses confidential information is subject to contempt proceedings

Comment

a. This does not preclude victim from suing Juv or Juv's parents based on Juv's act

F. Confidentiality and victim access to police records

1) See **Secs. 1.E.** and **1.K.**, *supra*

G. Confidentiality and victim access to Ct records and proceedings

§ 48.396(2)
§ 938.396(2)(a)

1) Juv Ct (and Municipal Ct records relating to Juvs) shall not be open to inspection except by order of Juv Ct

§ 938.346

2) However, known victim of a Juv's act shall receive timely notice of

a. Procedure for obtaining name of Juv and Juv's parents under § 938.396

b. Procedure for obtaining police records under § 938.396

c. Potential liability of parent under § 895.035

§ 938.346(1)(e)

d. Procedure by which victim of sexual assault may obtain order that alleged/adjudicated delinquent submit to HIV test or test or series of tests to detect presence of STD and obtain results of tests pursuant to § 938.296

§ 938.346(1)(ec)
§ 946.43(2m)

e. Procedure by which alleged victim of assault by Juv prisoner may obtain order that Juv submit to testing for communicable diseases and results be disclosed under § 938.296

§ 938.346(1)(d)
§ 938.24(5m)
§ 938.245, § 938.25(2m)
§ 938.32, § 938.295
§ 938.33

3) Victim shall also receive information regarding decision to close case or as to provisions of deferred prosecution agreement, consent decree, or dispositional order

a. Information shall not include psychological or psychiatric reports or other "sensitive personal" information regarding Juv or Juv's family that does not relate directly to act or alleged act against victim

§ 938.346(3)

b. If allegation not petitioned or dismissed, reasonable efforts must be made to notify victim that inquiry or proceeding has been terminated

§ 938.346(4)

c. If victim is a child, notice shall be given to parent, guardian, or legal custodian

§ 938.346(2)

d. Notice must contain explanation of restrictions on divulging information and penalties for violation

§ 938.346(1)(d)1.

e. Such notice does not affect the right of a victim to attend any hearing under § 938.299(1)(am)

4) Victims shall also receive notice of the following

§ 938.346(1)(f)

a. Right to request and receive notice of time and place of any proceeding

See Wis Const art I, § 9m

- Marsy's Law suggests a broader right to notice than prior law, but no definition of "proceeding" is provided
- Victims arguably have the right to be present at any proceeding, including events that historically may have occurred outside the courtroom, within short time frames or off the record. Because there is no clear definition of "proceeding," there is no clear answer to some of these situations
- Victims may "opt in" to exercise the right to attend proceedings at any point in the case, regardless of whether they have previously appeared at any other proceeding
- Marsy's Law does not specify who is responsible for providing notice of proceedings

§ 938.346(1)(em)

b. Right to confer with intake worker regarding deferred prosecution or with DA or Corp Counsel regarding possible outcomes, including consent decree

Wis Const art I, § 9m(2)(i)

c. Upon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon

§ 938.346(1)(fm) & (h)

d. Right to

Wis Const art I, § 9m(2)(e)

- Attend all proceedings
- Separate waiting area
- Their interests considered in granting continuances
- Victim impact information included in Ct report and to have person preparing report contact them for that purpose
- Employer intercession services for that purpose
- A service representative (victim assistance counselor) accompany them

Wis Const art I,
§ 9m(2)(m)

- Full restitution

- Victim compensation
- Speedy disposition
- Return of personal property
- Ability to complain to DOJ regarding victim treatment and request review by crime victim rights bd

Wis Const art I, § 9m(2)(e)

5) Upon request, victim has right to attend all proceedings involving the case. Marsy's Law removes previous language that allowed Ct to sequester victims if Ct found sequestration necessary for a fair trial

§ 938.396(2g)(k)
Appendix 1
SJO Offenses

6) Upon request, victim (or any other person) may inspect Ct record of any Juv alleged to be delinquent for committing an SJO offense listed in **Appendix 1** or for any felony if Juv has been adjudicated delinquent previously

a. May prohibit inspection of contents of file dealing with sensitive personal matters, including evaluations

b. This information may be further disclosed to anyone

§ 938.396(2g)(f)

7) Victim of Juv's act or alleged act may, with approval of Ct, obtain names of Juv and Juv's parents

§ 938.51(1), (4)

8) At least 15 days before release, or as soon as possible after Juv escapes from correctional custody, victim and any witness who testified against Juv (or adult relative of homicide victim) shall be notified (reasonable effort) by DOC or Cty agency of release/escape of Juv from correctional custody (including release under intensive sanctions) if

a. Victim, witness who testified, or victim's adult relative can be found

b. Victim, witness who testified, or victim's adult relative has sent a card to DOC or Cty Dept requesting notification

- DOC must prepare and provide cards for this purpose to DA, who must provide them without cost to victim and witnesses

§ 938.51(1d), (4)

c. Committed offense was against persons if Juv's release/escape was from nonsecured RCCCY

§ 938.346(1)(e)

9) Victim of sexual assault may request order that alleged/adjudicated delinquent be required to submit to HIV test or other STD tests and obtain results of those tests if they are ordered

a. See **JV 6, Sec. 7.**, for procedure and standards for issuance of order

Wis Const art I, § 9m(4)

10) The victim may assert and seek in any Circuit Ct, or before any other authority of competent jurisdiction, enforcement of the rights in Wis. Const. art. I, § 9m, and any other right, privilege, or protection afforded to the victim by law

6. For Information on HIV and STD Testing, See
JV 6

JV 13: TERMINATION OF PARENTAL RIGHTS

1. Definitions

§ 48.40(1)

A. Agency—DCF, Cty Dept, or licensed child welfare agency

§ 48.40(2)
§ 48.43(2)
§ 48.02(13)

B. Termination of parental rights (TPR)—pursuant to Ct order, all rights, powers, privileges, immunities, duties, and obligations existing between parent and child are permanently severed

§ 48.02(13)
St v James P
(In re TPR of Chezron M)
2005 WI 80
281 Wis. 2d 685

C. "Parent" means a biological parent, a husband who has consented to the artificial insemination of his wife under § 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under § 767.803, "parent" includes a person acknowledged under § 767.805 or a substantially similar law of another state, a person conclusively determined from genetic tests to be the father under § 767.804, or a person adjudicated to be the biological father

§ 48.40(1r)

1) For purpose of filing a petition on grounds specified in § 48.415, "parent" includes a person who may be parent of nonmarital child

§ 48.02(13)

2) For purposes of ICWA, all of above and, in addition, adoptive parent under tribal law or custom

2. Jurisdiction and Venue

§ 48.14(1);
see § 48.028(3)

A. Juv Ct has exclusive jurisdiction, except in Indian child custody proceedings

B. Venue

§ 48.185(2)

1) Cty where child or birth parent resides when petition filed

§ 48.837, § 48.83

2) Cty where proposed adoptive parent(s) resides when petition filed if filed in conjunction with petition for adoptive placement, except as provided in § 48.028(3)(b)

§ 48.185(2)

C. Venue if child placed out of home under CHIPS/UCHIPS order

1) Cty where CHIPS/UCHIPS order issued

2) If child's Cty of residence has changed or parent has resided in different Cty for 6 months, Ct may

a. Upon motion and for good cause shown

b. Transfer case with all appropriate records to Cty of residence of child or parent

D. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

§ 822.02(4)
PC v CC (In Int of AEH)
161 Wis. 2d 277 (1991)
NJW v St (In Int of JT)
168 Wis. 2d 646
(CA 1992)

1) TPR and guardianship proceedings are custody determinations governed by UCCJEA

Tammie JC v Robert TR
(In re TPR
to Thomas JR)
2003 WI 61
262 Wis. 2d 217

a. Status exception of UCCJEA allows Wis Ct to exercise jurisdiction in child custody proceeding, including CHIPS and TPR, involving parent who is not a resident of Wis and has no significant contacts with Wis. Out-of-state parent must be provided notice and opportunity to be heard

§ 822.21(1)

2) Wis has initial jurisdiction under UCCJEA in TPR proceedings if one of following conditions met

§ 822.02(7)
Gooch v Gooch
(In re RJG)
107 Wis. 2d 704
(CA 1982)

a. Wis is child's "home state" on date of commencement of proceeding

§ 822.21(1)(a)

b. Wis had been child's home state within 6 months before proceedings commenced, and

- Child absent from Wis, but
- Parent or person acting as parent continues to live in Wis

§ 822.21(1)(b)

c. Ct of another state does not have jurisdiction under paras. a. and b., above, or Ct of home state has declined to exercise jurisdiction on ground that it is inconvenient forum or person requesting other Ct jurisdiction engaged in unjustifiable conduct and Wis more appropriate forum, and both of the following apply

- Child and at least one parent or person acting as a parent have significant connection with Wis, other than mere physical presence

- Substantial evidence available here in Wis regarding child's care, protection, training, and personal relationships

§ 822.21(1)(c)

d. All Cts having jurisdiction under paras. a., b., and c., above, have declined jurisdiction on the ground they are inconvenient forums or person requesting other Ct jurisdiction engaged in unjustifiable conduct and Wis more appropriate forum

§ 822.21(1)(d)

e. No Ct of any other state would have jurisdiction under paras. a., b., c., or d., above

David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

3) UCCJEA does not apply to in-state parties

§ 48.028
25 USC 1901–1963
81 OAG 60

E. Indian Child Welfare Act (ICWA)

§ 48.028; 25 USC 1903(1)

1) TPR is child custody proceeding under ICWA

25 USC 1911(a)
§ 48.028(3)

2) Indian tribe has exclusive jurisdiction over Indian child involved in child custody proceeding who resides or is domiciled within reservation

§ 48.02(2), (8g)

a. "Indian child" means any unmarried person under 18 who is either

25 USC 1903(8)

- A member of an Indian tribe, or

§ 48.02(8m)

- Eligible for membership in an Indian tribe and the biological child of an Indian tribe member

Sheboygan Cty DHS
v Neal JG (In re TPR
to Arianna RG)
2003 WI 11
259 Wis. 2d 563

b. When Ct knows or has "reason to know" of child's Indian heritage, Ct must make further inquiry

§ 48.028(3)(c)
25 USC 1911(b)
Brown Cty v Marcella G
(In Int of Shawnda G)
2001 WI App 194
247 Wis. 2d 158

3) If parent, Indian custodian, or child's tribe requests, Ch 48 Ct must transfer child custody proceedings of Indian child not domiciled or residing within reservation to tribe unless

a. Parent of the Indian child objects to transfer

b. Child's tribe does not have tribal Ct or declines jurisdiction

c. Good cause to deny is determined by clear and convincing evidence that

- Indian child is 12 years or older and objects to transfer,
- Undue hardship to present evidence at tribal Ct, and tribal Ct unable to mitigate hardship, or
- Child's tribe received notice of TPR proceeding and has not indicated to Ct intent to request transfer, and petition for transfer filed more than 3 months after notice

§ 48.028(4)

4) ICWA imposes procedural requirements for TPR

25 USC 1912(a)

a. 10 days after receipt of written notice to:

- Child's tribe
- Parent, Indian custodian, if any

b. 15 days after receipt of notice by US Sec'y of Interior, if identity or location of parent, Indian custodian, or tribe unknown

c. If involuntary TPR proceeding

- Notice by registered mail
- Parent, tribe, or Indian custodian has right to intervene

§ 48.23(2g)
25 USC 1912(b)

- Indigent parents or custodians of Indian children have right to Ct-appointed counsel

25 USC 1912(d)

d. Any party seeking involuntary TPR must satisfy Ct or jury that

§ 48.028(4)(e)1.

- Beyond reasonable doubt that continued custody by parent or Indian custodian is likely to result in serious emotional or physical harm

§ 48.028(4)(e)2., (g)1.

- By clear and convincing evidence that ongoing vigorous efforts were made to prevent breakup of Indian family

- These efforts unsuccessful

25 USC 1911–1923

5) Whenever Indian child, parent, or custodian involved in TPR proceedings, ICWA must be reviewed and complied with

3. Petition, Summons, Notice

§ 48.42(1)

A. Petition may be filed by

1) Parent

2) Agency, defined in § 48.40(1)

§ 48.25(1)

3) DA, Corp Counsel, GAL or counsel for child, relative, parent or guardian, or other appropriate person designated by Ct

§ 48.835(3)(a)

4) Relative with whom child placed by parent for adoption

§ 48.835(3)(b)

5) Stepparent with whom child and child's parent reside

a. May only file petition to TPR noncustodial parent of child

§ 48.839(3)(a)

6) Guardian of child from foreign jurisdiction

a. Must file within 60 days after arrival of child in Wis

b. May file adoption petition in conjunction with TPR petition

c. Must file adoption petition within 60 days after TPR order

§ 814.61(1)(c)4.

7) Filing fee should not be charged

§ 48.42(1)

B. When petition must be filed or joined in by representative of public

§ 48.417(1)

1) By the last day of the 15th month, if

a. Child has been placed outside home, in foster home, foster home, group home, nonsecured RCCCY, or shelter care facility, for 15 of last 22 months (not including runaway periods or periods residing in trial reunification home)

§ 48.417(1)(b)

2) Within 60 days after date Ct found child abandoned if

a. Ct has found under § 48.13(2) or comparable law of other jurisdiction that child was abandoned when less than one year of age or that parent abandoned child less than one year old in violation of § 948.20 or comparable law of other jurisdiction

3) Within 60 days after Ct finding reasonable efforts not required because Ct has found that

§ 940.01, § 940.02
§ 940.03
§ 940.05, or comparable
law of other jurisdiction

a. Parent has committed, aided or abetted, solicited, conspired, or attempted to commit a violation against a child of the parent

§ 940.19(2), (4), (5)
§ 940.19(3), 1999 Stats
§ 940.225(1), (2)
§ 948.02(1), (2)
§ 948.025, § 948.03(2)(a),
(3)(a), or (5)(a)1., 2., or 3.
§ 948.051, § 948.085, or
§ 940.302(2) (if
§ 940.302(2)(a)1.b.
applies) or comparable
law of other jurisdiction

b. Ct has found that parent committed a violation resulting in great or substantial bodily harm to a child of the parent

§ 48.417(2)

4) Notwithstanding the above, petition need not be filed or joined in if

a. Child being cared for by a fit and willing relative of child

b. Permanency plan indicates and provides documentation that TPR not in child's best interest

c. Responsible agency has not provided family with services necessary for safe return of child to home

d. Grounds for involuntary TPR do not exist

e. Responsible agency, if required to make active efforts under § 48.028(4)(d)2. to prevent breakup of Indian child's family, has not provided services necessary to prevent breakup of Indian child's family

§ 48.42(1)

C. Contents of petition

1) Name, birth date (or anticipated birth date), and address of child, and whether the child has been adopted

2) Name and addresses of parents, guardian, and legal custodians

3) Information required under § 822.29(1) (UCCJEA)

4) Statement

§ 48.41

a. That consent will be given to voluntary TPR, or

§ 48.415

b. Of statutory grounds for involuntary TPR and facts and circumstances alleged to establish grounds

§ 822.29(1)
David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

5) Affidavit of custody required by UCCJEA

a. Petition or attached affidavit must contain sworn information regarding

- Child's present address and addresses for last 5 years
- Names and present addresses of the persons with whom child has lived during that period
- Whether party has participated as a party, witness, or in any other capacity in any other litigation concerning custody, physical placement, or visitation of same child in Wis or any other state
- Whether party has information of any pending proceeding concerning the child that could affect the current proceeding, and
- Whether party knows of any person not a party to the proceedings who has physical custody of child or claims to have legal custody, physical placement, or visitation rights with respect to the child

6) See **Family Benchbook** for complete information on UCCJEA

§ 48.255(1)(cm)

7) Whether child may be subject to ICWA, and, if child may be subject to ICWA, names of the child's Indian custodian, if any, and tribe, if known

D. Following persons must be summoned

§ 48.42(2)(a)

1) Parent(s) of child

§ 48.41(2)(d)

a. Unless parent waived right to notice

2) If nonmarital child, parents not subsequently intermarried, or child not adopted and paternity not established

§ 48.42(2)(b)1., (bm)1.
§ 48.025

a. Person who filed unrevoked declaration of paternal interest before child's birth or within 14 days after child's birth or, if child is under one year of age at time petition is filed and if affidavit under § 48.42(1g)(a) is filed, within 21 days after notice under § 48.42(1g)(b) is mailed

§ 48.42(2)(b)2.
§ 48.41(2)(c)

b. Person(s) alleged to be father of child, or person who may be father unless notice waived

§ 48.42(2)(b)3.

c. Person who has lived in familial relationship with child and may be father

d. Notice <u>not</u> required

§ 48.42(2m)(b)

- For person who may be father of nonmarital child whose paternity not established, actual notice NOT required unless declaration of paternal interest filed within statutory time period (and is not revoked) or unless other conditions under § 48.42(2)(b) or (bm) present

§ 48.42(2m)(a)
Ann MM v Rob S
(TPR of SueAnn AM)
176 Wis. 2d 673 (1993)

- Notice NOT required for person who may be father of child conceived as result of sexual assault if physician attests to belief that sexual assault occurred

— In violent or other "non-statutory" sexual assault, physician must testify to belief assault occurred; in "statutory" sexual assault (based on age of victim), physician must testify merely about age of victim, if at all

Duane N v Natalie T
(In Int of Michael AT)
182 Wis. 2d 395
(CA 1994)

— This exception does not apply, and notice IS required if no sexual assault shown but child conceived as a result of violation of § 948.09 prohibiting intercourse with a child 16 or over

§ 48.42(2)(c)

3) Guardian, GAL, legal custodian, and Indian custodian of child

§ 48.42(2)(d), Ch 822

4) Any other person required to be given notice by UCCJEA or ICWA

a. Excludes foster parents (see para. 9) below)

§ 822.25(1)

b. Includes any person who has physical custody of child

c. Includes any person who claims right to custody or visitation rights

Recommendation

- Include grandparent who has obtained visitation privileges with child whose parent is deceased

Recommendation

- Include any person who has obtained custody or visitation rights by Ct order

§ 48.42(2)(e)

5) Child age 12 or older

David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

6) GAL for child presently serving in another action, even if in another Cty

7) Sec. 803.09, civil intervenor statute, does not apply to Ch 48 TPR proceedings

David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

8) Sec. 48.27(6) general notice provision, does not apply to § 48.837 proceedings on TPR and adoptive placement

§ 48.42(2g)

9) Notice required to foster parent or other physical custodian of all hearings. If Indian child, see **JV 17, Sec. 2.C.**

a. First notice written, with copy of petition and nature, location, date and time of initial hearing. Thereafter, telephone notice at least 72 hours before hearing may be given if documented in writing (signed) in case file stating time and to whom notice given

- Failure to comply does not deprive Ct of jurisdiction

§ 48.42(3)

E. Contents of summons

1) Name and birth date (or anticipated birth date) of child

2) Nature, location, time, and date of hearing

3) Notice of right to counsel, appointed if eligible

§ 48.42(4)(c)1.

4) Notice of possible result of hearing and consequences of failure to appear or respond, including that parental rights may be terminated

5) That if Ct terminates parental rights, notice of intent to pursue relief from judgment must be filed in Trial Ct within 30 days after judgment entered for right to pursue relief to be preserved

§ 48.42(4)

F. Service of summons and petition

§ 48.42(4)(a)

1) Personal service of summons and petition must be made on interested parties, if known, at least 7 days before hearing

a. Substituted service not permitted

b. Not required on party who has voluntarily submitted to jurisdiction of Ct

§ 801.11

c. Service on parties who are not natural persons or those under disability is as prescribed by general civil procedure

25 USC 1912(a)
§ 48.42(2g)(ag)

d. ICWA requires notice by registered mail

- 10 days' notice to parent, Indian custodian, or tribe, or
- 15 days' notice to US Sec'y of Interior

§ 801.15(1)(b)

e. Saturdays, Sundays, and holidays excluded in computing time period of less than 11 days

Recommendation

f. Give 11 days' notice for all TPRs

g. Service by email or fax may be valid under § 801.14(2)

2) Constructive notice

a. Service must be by publication of notice if

§ 48.42(4)(b)1.

- With reasonable diligence any party required to be summoned cannot be personally served, or

§ 48.42(4)(b)1m.

- Child's custody was relinquished under § 48.195

§ 48.42(4)(b)2.

- Child is nonmarital child who is not adopted, parents not subsequently intermarried and paternity not conclusively determined from genetic test results, adjudicated, or acknowledged

§ 48.42(4)(b)3.
§ 48.422(6)(b)

b. Petitioner may ask Ct for order waiving requirement of constructive notice to person who, although his identity unknown, may be father of nonmarital child

§ 48.42(4)(b)4., Ch 985

c. Constructive notice is published as Class 1 notice

- Petitioner or Ct must determine newspaper most likely to give notice to party considering residence of party or relatives, if known, or last known location of party

- If post office address of party is known or with due diligence can be ascertained, copy of summons and petition must be mailed to party before or upon publication

§ 48.42(4)(b)4.

d. Contents of publication notice

- Date, place, and Circuit Ct branch for hearing

- Ct file number

- Name, address, and telephone number of petitioner's Atty

§ 48.42(4)(c)

- Information that parental rights may be terminated if parent fails to appear

- Right to counsel, appointed if eligible

- If Ct terminates parental rights, notice of intent to pursue relief from judgment must be filed in Trial Ct within 30 days after entry of judgment

§ 48.42(4)(b)4.

e. Notice to include information Ct determines necessary to give effective notice, including, if known

- Name of noticed party(ies)

- Description of party(ies)

- Former address of party(ies)

- Approximate date and place of conception

- Date and place of birth of child

§ 48.42(4)(b)5.

f. Notice must NOT include

- Name of mother unless she consents

- Name of child, unless Ct determines it necessary to give father effective notice

§ 48.28

G. Failure to obey summons

1) Any person summoned who fails to appear without reasonable cause subject to contempt of Ct

2) Capias may be issued for parent, guardian, or child if

a. Summons cannot be served, or

b. Party served fails to obey summons, or

c. It appears that service will be ineffectual

3) Consider default judgment. See **Sec. 6**, *infra*

4. Visitation or Contact Rights

§ 48.42(1m)

A. Petitioner for involuntary TPR may simultaneously petition Ct for temporary order and injunction prohibiting respondent parent from visiting or contacting child

1) Petition must allege facts showing prohibition of visitation or contact in child's best interest

B. Ct may grant or deny temporary order ex parte

1) If granted, in effect until hearing on injunction

C. On or before date of initial hearing on TPR petition, Ct must hold hearing on whether to issue injunction

D. Notwithstanding any dispositional order, Ct may grant injunction prohibiting respondent from visiting or contacting child upon finding that prohibition is in child's best interest

1) Injunction may not remain in effect beyond date Ct dismisses or grants petition for TPR

§ 48.42(1m)(d)

2) Temporary order or injunction suspends that part of Ch 48 or Juv Ct order setting rules of parental visitation until termination of temporary order or injunction

§ 48.42(1m)(e)

E. Ct shall grant temporary order and injunction if parent has been convicted of 1st- or 2nd-degree intentional

homicide of child's other parent and the conviction has not been reversed, set aside, or vacated unless

1) Ct finds by clear and convincing evidence, after considering child's wishes, that visitation or contact would be in child's best interests

5. Hearing Procedures

§ 48.23

A. Right to counsel

1) Child's right to counsel

§ 48.235(1)(c)

a. GAL required in all TPR cases

§ 48.235
Waukesha Cty DSS v CEW (In Int of CEW)
124 Wis. 2d 47 (1985)

- GAL has right to develop facts as relate to TPR grounds

§ 48.235(3)

- GAL to advocate for best interests of child and function independently, as any Atty

2) Parent's right to counsel

§ 48.23(2)

a. Counsel required if parent age 17 or younger and involuntary TPR

- May not waive counsel

§ 48.235(1)(b), (g)

b. GAL required if parent age 17 or younger and voluntary TPR, or if, regardless of age, Ct finds that parent is not competent

§ 48.23(2)

c. Counsel required if parent age 18 or older and involuntary TPR

§ 48.23(2)(c)
St v Shirley E (TPR to Torrance P)
2006 WI 129
298 Wis. 2d 1

- Defaulted parent retains right to counsel at dispositional phase, motion to vacate, or motion to reconsider default judgment

MW v Monroe Cty DHS (In re TPR to MAM)
116 Wis. 2d 432 (1984)

- May waive counsel if knowing and voluntary

Dane Cty Dept of Human Servs v Susan PS

(TPR to Sophia S)
2006 WI App 100
293 Wis. 2d 279

- Determination of competency for self-representation follows standards applicable to criminal Defs

d. Counsel not required by statute for voluntary TPR by parent age 18 or older

§ 48.23(3), § 48.235(1)(a)

e. Counsel or GAL may be appointed in any case at discretion of Ct unless parent retains counsel of own choosing

Recommendation

- Good policy to appoint counsel in ALL TPR cases

Recommendation, see
EH v Milwaukee Cty
(In Int of TL)
151 Wis. 2d 725
(CA 1989)

- GAL appointed for incompetent parent cannot waive fact-finding hearing; parent entitled to full representation of advocacy counsel at such hearing

AS v St (In Int of MD(S))
168 Wis. 2d 995 (1992)

f. Effective representation by counsel required

§ 48.41(3)

g. If GAL doubts parent's capacity to consent to voluntary TPR, GAL to inform Ct

Judic. Council Note,
1990

- Any party doubting any age parent's capacity must so inform Ct

- Ct must inquire into parent's capacity and make findings

- If Ct finds parent incapable of consent, Ct must dismiss proceedings without prejudice

- Dismissal does not preclude involuntary TPR

§ 48.23(3), § 48.235(1)(a)

3) Other party's right to counsel

a. Ct may appoint counsel or GAL for any party

§ 48.23(4), § 48.235

b. If counsel or GAL appointed

- Must be competent, independent counsel; GAL must be Atty

§ 48.23(4), § 48.235(8)

- Reimbursement must be in manner suitable to Ct; payment of GAL by Cty, except in adoptions when adoptive parent or agency must pay

Recommendation
50 USC 3931

c. Appoint GAL for party in military service

§ 48.23(2g)

4) For right to counsel for parent or Indian custodian of Indian child, see **JV 17**

§ 757.69(1m)(c)

B. Hearings conducted by Judge not CCC

SCR 71.01

1) Must be recorded

2) Child must be present

§ 48.424(2)(a)

a. Ct may exclude child from TPR fact-finding hearing

Comment

3) Judge should consider holding voluntary TPR hearing in chambers or in conference room

§ 48.424(2)(b)

C. General public must be excluded from hearings

1) Persons who may be present

a. Parties

b. Counsel/GAL/CASA

§ 48.299(1)(ag)

c. Child's foster parent or physical custodian (§ 48.62(2))

- May be excluded from portions of hearing dealing with sensitive personal information

d. Witnesses

e. Anyone requested by party and approved by Ct

f. Anyone Ct finds to have proper interest in case or work of Ct, including Attys or a person engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 U.S.C § 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

- Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

Ann MM v Rob S
(TPR of SueAnn AM)
176 Wis. 2d 673 (1993)

2) Persons who may not appear

a. Father of child conceived as result of sexual assault does not have standing to appear in TPR

b. Not unconstitutional to prohibit him from appearing to contest the petition

Ch 785

3) Anyone who divulges information that would identify child or family subject to contempt of Ct

D. Use of restraints

Restraints can be used only in limited circumstances, and only if Ct makes specific findings as outlined in § 48.299(2m). *See infra* **Appendix 13**

6. Initial Hearing on Petition

A. Time periods

§ 48.422(1)
BF v GDJ (TPR of JLF)
168 Wis. 2d 634
(CA 1992)

1) Initial hearing held within 30 days after petition filed (except as provided in § 48.42(2)(ag) in case of Indian child)

Recommendation

a. Status conference should be held within 10 days to

- Set TPR trial date
- Address problems relating to paternity

25 USC 1913(a)
§ 48.028(5)(b)

b. Consent given before or within 10 days after birth of Indian child not valid

Recommendation

c. Hold hearing after birth of child

§ 48.837(4)(a)

2) Initial hearing held within 30 days after petition filed if in conjunction with independent adoption

a. May not be held before birth of child

25 USC 1913(a)
§ 48.028(5)(b)

b. Consent given before or within 10 days after birth of Indian child not valid

§ 48.315(2)

3) Delays, continuances, and extensions may be granted by Ct

a. For good cause in open Ct on record

b. For only as long as necessary

§ 48.422(5)

c. Nonpetitioning parties must be granted continuance for purpose of consulting Atty regarding request for jury or substitution of Judge

B. Purpose of hearing

§ 48.422(1)

1) To determine whether a party wishes to contest petition in whole or in part

2) To determine whether parties wish to have or waive representation by an Atty

Burnett Cty Dept of Soc Servs v Kimberly MW (In Int of Robert D)
181 Wis. 2d 887
(CA 1994)
overruled in part by
Steven V Kelley H (In re TPR to Alexander V)
2004 WI 47
271 Wis. 2d 1

a. Failure to fully advise parties not reversible error unless prejudice shown

§ 48.422(1), (4)
MW v Monroe Cty DHS (In re TPR to MAM)
116 Wis. 2d 432 (1984)

3) To inform parties of right to jury trial, substitution of Judge

a. Any necessary party or party whose rights may be affected granted jury trial upon request

b. Request must be made before end of initial hearing

Walworth Cty DHHS v Andrea LO (In re TPR to Lyle DE)
2008 WI 46
309 Wis. 2d 161
Manitowoc Cty Human Servs Dept v Allen J (In re TPR to Brandon J)
2008 WI App 137
314 Wis. 2d 100

c. Jury demand, once made, must be personally withdrawn in a knowing and voluntary fashion by parent

§ 48.422(1), § 48.423

4) To determine whether any man alleging paternity wishes to contest TPR

a. Set hearing on issue of paternity

- Ct may immediately hear testimony if all parties agree

§ 48.23

b. Inform of right to counsel as appropriate

§ 48.423

c. Claimant must prove paternity by clear and convincing evidence

§ 48.23(2)
Dane Cty DHS v Mable K
(In re TPR to Isaiah H)
2013 WI 28
346 Wis. 2d 396
Evelyn CR v Tykila S
(In re TPR to Jayton S)
2001 WI 110
246 Wis. 2d 1

C. If parent has been summoned and fails to appear, Ct may enter default judgment, but only after taking testimony on grounds

1) Parent not in default if appears by counsel, but Ct may enter default judgment for failure to comply with order to personally appear

2) Counsel has right to present evidence before Ct enters default judgment

§ 48.23(2)(b)3.

3) Parent 18 and over presumed to waive right to counsel and to appear by counsel for failure to appear in person if Ct has ordered personal appearance and Ct finds failure to appear egregious and without clear and justifiable excuse

a. Failure to appear at consecutive hearings presumed egregious and without clear and justifiable excuse

- Ct cannot hold dispositional hearing until two days have elapsed after date of finding that failure to appear is egregious and without clear and justifiable excuse

§ 48.23(2)(c)

b. Right to counsel required for motion to vacate or reconsider default judgment, but can be waived or presumed waived under § 48.23(2)(b)1. or 3.

4) Noncomplying party must act egregiously or in bad faith before Ct can sanction party by entering default judgment

Comment

D. Ct should use initial hearing to rule on motions, discovery, and physical, psychological, mental, developmental, or AODA examinations

§ 48.422(6)(a)

E. Adjudication of paternity for nonmarital child who is not adopted, parents not subsequently intermarried, and for whom paternity not established or for whom declaration of paternal interest has not been filed within statutory time period

1) Ct must hear testimony regarding paternity

§ 48.422(6)(a)

2) Ct must determine whether all interested parties who are known have been notified under § 48.42(2) and (2g)(ag)

§ 48.837(4)(e)

3) Ct must determine rights of any person who may be child's father under § 48.423

4) Ct must determine whether all known interested parties have been notified

a. If not, adjourn hearing and order appropriate notice

§ 48.422(6)(b)

5) If Ct determines that unknown person may be father and notice not waived, Ct must determine whether constructive notice will substantially increase likelihood of notice

a. If Ct determines that likelihood of notice would be substantially increased by constructive notice and petitioner has not published or Ct determines publication used was insufficient

- Ct must adjourn for period not to exceed 30 days and order constructive notice

b. If Ct determines that likelihood of notice would not be substantially increased by constructive notice, Ct must proceed with hearing

6) If paternity adjudicated, proceed with TPR

§ 48.422(6)(c)

7) If paternity adjudicated and no TPR, Ct may

Ch 767

a. Make and enforce orders for suitable care, custody, and support as Ct having jurisdiction over actions affecting the family

§ 48.345

b. Make CHIPS dispositional order if CHIPS finding by Ct

§ 48.422(7)(bm)

F. Establish whether a proposed adoptive parent of child identified

1) If so, and proposed adoptive parent not a relative of child, order petitioner to submit a report under § 48.913(7) regarding payments and agreements

§ 48.422(2)

G. If petition contested, Ct must set fact-finding hearing date within 45 days (except as provided in § 48.42(2g)(ag) in case of Indian child)

Recommendation
Evelyn CR v Tykila S
(In re TPR to Jayton S)
2001 WI 110
246 Wis. 2d 1

1) Ct should order parent to personally appear at all subsequent proceedings or face potential default judgment

2) Unless all necessary parties agree to commence hearing on merits immediately

§ 48.315(2)

3) Continuances may be granted by Ct only on showing of good cause on record in open Ct or in telephone conference and only for so long as necessary

§ 48.315(1)

4) Certain delays not included in computing time period

§ 48.315(2)
St v Robert K
(In re TPR to Moriah K)
2005 WI 152
281 Wis. 2d 143

5) Continuance may be granted under § 48.315(2), independent of grounds in § 48.315(1). Ct's calendar and Atty scheduling conflicts may constitute good cause. If Ct relies on § 48.315(2), it should:

a. Cite statute on record

b. State basis for concluding good cause exists to continue, delay, or extend hearing date

c. Explain hearing not delayed longer than necessary

§ 48.422(3)

H. If petition not contested, Ct must

Waukesha Cty
v Steven H (In re TPR
of Brittany Ann H)
2000 WI 28
233 Wis. 2d 344

1) Hear testimony in support of the allegations in petition and

§ 48.422(7)
Brown Cty DHS v
Brenda B (In re TPR to
Desmond F)
2011 WI 6
331 Wis. 2d 310
Oneida Cty DSS
v Therese S
(In re TPR to Yasmine B)
2008 WI App 159
314 Wis. 2d 493

2) Before accepting an admission or no contest plea

a. Address parties present and determine that admission is voluntary with understanding of nature of alleged acts and potential dispositions

- Ct must inform parent that

— Finding of unfitness is required

— Best interest standard governs at disposition phase

— Ct either grants TPR petition or dismisses

b. Establish whether promises or threats made to elicit admission

§ 48.422(7)(br)

c. Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of § 48.63(3)(b)5. Upon a finding of coercion, Ct shall dismiss petition

§ 48.422(7)(bm)

d. Review report submitted under § 48.913(7) and determine whether payments coercive to birth parent or alleged/presumed father

- Payments conditioned on TPR are presumptively coercive
- If coercive, dismiss petition or, with parties' agreement, delete coercive conditions
- If impermissible payments have been made, Ct may refer to DA for prosecution
- Sec. 48.422(7)(bm) does not apply to petition for independent adoptive placement with a nonrelative

§ 48.422(7)(b)

e. Alert unrepresented parties that Atty may discover defenses or mitigating circumstances

§ 48.422(7)(c)

f. Make inquiry to satisfactorily establish factual basis for admission

3) See below for requirements for accepting admission

7. Four Methods of Consenting to Voluntary TPR (If an ICWA case, a fifth method is available, see JV 17 for discussion)

§ 48.028(5)(b)

NOTE: Consent may be withdrawn for ICWA.

§ 48.41(2)(a)

A. Parent appears personally and consents

1) Record is important

a. To ensure that consent is informed and voluntarily given

b. To ensure that sufficient record made so consent binding in future

§ 48.41(3)

2) If GAL doubts capacity of parent to give informed and voluntary consent, s/he shall inform Ct

Judic. Council Note, 1990

a. Any party doubting parent's capacity to consent required to so inform Ct

b. Ct must inquire into parent's capacity and make finding whether parent capable of giving informed and voluntary consent to termination

- If parent incapable, Ct to dismiss proceedings without prejudice
- Dismissal does not preclude involuntary TPR

§ 48.41(2)(a)

3) Judge must

a. Explain effects of TPR

b. Question parent regarding whether consent is voluntary and informed or permit an Atty for any party to so question parent

25 USC 1913(a)

c. Certify that Indian parent or custodian understood English explanation or it was interpreted into appropriate language

TMF v Children's Serv Soc'y of Wis (In Int of DLS) 112 Wis. 2d 180 (1983)

4) Minimum information Ct must determine on record using open-ended questions for parent

a. Extent of parent's education and level of general comprehension

b. Parent's understanding of nature of proceedings and consequences of TPR, including finality of parent's decision and Ct's order

Comment

- Whether parent aware of rights and responsibilities being given up

- Whether parent understands appellate rights

TMF v Children's Serv Soc'y of Wis (In Int of DLS) 112 Wis. 2d 180 (1983)

c. Parent's understanding of GAL's role (if parent is minor) and parent's understanding of right to retain counsel at own expense

d. Extent and nature of parent's communication with GAL, social worker, or any other adviser

§ 948.24

e. Whether any payments, promises, or threats made to parent to induce TPR

TMF v Children's Serv Soc'y of Wis (In Int of DLS) 112 Wis. 2d 180 (1983)

- Advice, argument, or persuasion do not constitute coercion if individual who makes decision acts freely when s/he gives consent

St v Rippentrop 2023 WI App 15 406 Wis. 2d 692 *pet for rev denied*

- Agreement by DA to not prosecute criminally does not render a consent involuntary

f. Whether parent aware of significant alternatives to termination and what those are

AB v PB (In Int of AB) 151 Wis. 2d 312 (CA 1989)

- Voluntariness cannot be found unless record shows parent is aware of alternatives to TPR

- GAL must be appointed for minor parent in sufficient time to make full and adequate investigation of alternatives

§ 48.82(3)

5) Judge should determine whether birth parent wishes child placed with adoptive parents of same religion

§ 48.41(1), § 48.426

6) When voluntary consent given, Judge may proceed immediately to disposition (See **Sec. 10**, *infra*)

§ 48.41(2)(b)

B. Parent may appear before another Judge of any Ct of record, an embassy or consul official, or military Judge and sign written consent

1) Acceptable if Juv Ct finds it would be difficult or impossible for parent to appear in person

§ 48.41(2)(b)2.

a. Ct may, on request of parent, admit telephonic or live audiovisual testimony

2) Written consent accompanied by signed findings by Judge or embassy or consul official who accepted consent

3) Written findings to state that official, Judge, or Atty for any party

a. Explained effects of TPR

b. Questioned parent regarding whether consent voluntary and informed

25 USC 1913(a)

c. If Indian child, written consent must be recorded before Judge who certifies that Indian parent or custodian understood English explanation of TPR or it was interpreted into appropriate language

Recommendation
TMF v Children's Serv
Soc'y of Wis
(In Int of DLS)
112 Wis. 2d 180 (1983)

4) Minimum information Judge, consul, or embassy official should determine on record using open-ended questions for parent

a. Extent of parent's education and level of general comprehension

b. Parent's understanding of nature of proceedings and consequences of TPR, including finality of parent's decision and Ct's order

Comment

- Whether parent aware of rights and responsibilities being given up

- Whether parent understands appellate rights

TMF v Children's Serv
Soc'y of Wis
(In Int of DLS)
112 Wis. 2d 180 (1983)

c. Parent's understanding of GAL's role (if parent is minor) and parent's understanding of right to retain counsel at own expense

d. Extent and nature of parent's communication with GAL, social worker, or other adviser

e. Whether any promises or threats made to parent in connection with TPR

TMF v Children's Serv
Soc'y of Wis
(In Int of DLS)
112 Wis. 2d 180 (1983)

- Advice, argument, or persuasion do not constitute coercion if individual who makes decision acts freely when s/he gives consent

f. Whether parent aware of the significant alternatives to termination and what those are

TMF v Children's Serv Soc'y of Wis (In Int of DLS) 112 Wis. 2d 180 (1983)

- GAL must be appointed for minor parent in sufficient time to make full and adequate investigation of alternatives

§ 48.82(3)

5) Judge or embassy or consul official should determine whether birth parent wishes child to be placed with adoptive parents of same religion

§ 48.41(1), § 48.426

6) When voluntary consent given, Judge may proceed immediately to disposition (See **Sec. 10**, *infra*)

§ 48.41(2)(c)

C. Person who may be father of nonmarital child but is not adjudicated may consent as above (in A. or B.) or sign written notarized statement

1) Statement to recite that he

a. Has been informed of and understands effect of TPR

b. Voluntarily disclaims any rights to child

§ 48.42(2)(b)2.

c. Voluntarily disclaims right to notice of TPR proceedings

Comment

2) Signed consent serves as grounds for termination

§ 48.41(1), § 48.426

3) When voluntary consent given, Judge may proceed immediately to disposition (See **Sec. 10**, *infra*)

§ 48.41(2)(d)

D. If TPR proceeding held before adoption proceeding in which petitioner is child's stepparent or in which child's birth parent is resident of foreign jurisdiction, child's birth parent

1) May consent as above (in **Sec. A.** or **B.**), or

2) May file affidavit witnessed by 2 persons stating that s/he

a. Has been informed of and understands effect of TPR

b. Voluntarily disclaims all rights to child

c. Voluntarily disclaims right to notice of TPR proceedings

Comment

3) Signed consent serves as grounds for termination

§ 48.41(1), § 48.426

E. When voluntary consent given as permitted in Secs. A.–D., *supra*, Judge may proceed immediately to disposition (See Sec. 10, *infra*)

Gerald O v Cindy R
(In re TPR of Michael IO)
203 Wis. 2d 148
(CA 1996)

1) Parental rights may not be terminated to advance parent's interest. TPR must be in best interest of child

8. Involuntary TPR

SDS v Rock Cty DSS
(In re TPR of TMS)
152 Wis. 2d 345
(CA 1989)

A. Proceedings to terminate parental rights against both parents may be brought in single action in interest of judicial economy and in absence of prejudice

Waukesha Cty DSS v
CEW (In Int of CEW)
124 Wis. 2d 47 (1985)

B. TPR is bifurcated process

§ 48.422(2)

1) Grounds phase (Fact-finding)

a. Must be held within 45 days after initial hearing (except as provided in § 48.42(2g)(ag) in case involving Indian child)

§ 48.315

b. Ct may grant continuance on showing of good cause

§ 48.424

2) Disposition phase (Disposition)

§ 48.424(4)

a. Must be held within 45 days after fact-finding hearing (except as provided in § 48.42(2g)(ag) in case involving Indian child)

§ 48.315

b. Ct may grant continuance on showing of good cause

c. See Sec. 10, *infra*, for disposition

C. Pretrial procedures

§ 48.293(4)

1) Discovery procedures of Ch 48 and Ch 804 apply to TPR

a. Statute supersedes *In Int of Zachary F* (also known as *State v Tammy F*), 196 Wis. 2d 981 (CA 1995)

Steven V
Kelley H (In re TPR to
Alexander V)
2004 WI 47
271 Wis. 2d 1

2) Partial summary judgment may be appropriate in grounds phase of involuntary TPR case when no genuine issue of material fact exists

Brown Cty Human Servs
v BP (In re TPR to AP)
2019 WI App 18
386 Wis. 2d 557

a. However, the Ct is cautioned as to the use of summary judgment

D. Fact-finding hearing—Grounds phase

1) To determine whether grounds for TPR exist

§ 48.31(1)

2) To determine whether allegations of TPR petition proved

St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563
But see St v Stacee P
(In TPR to Enisha H)
Nos 2012AP167,
2012AP168, 2012AP169,
2012AP444, 2012AP445,
2012AP446, 2012 WL
2094390
(Wis CA 6/12/12)
(unpublished opinion
citable for persuasive
value per 809.23(3)(b))

a. Determination generally based on facts as they existed when petition filed

St v Bobby G (In re TPR
to Marquette S)
2007 WI 77
301 Wis. 2d 531

- When asserted ground is failure to assume parental responsibility, Ct must consider biological father's efforts after he discovers his paternity, including facts arising after TPR petition was filed

b. Burden of proof is clear and convincing evidence. (But for burden of proof for Indian child TPR, see para. 3), *infra*)

Santosky v Kramer
102 S. Ct. 1388 (1982)
RDK v Sheboygan Cty
Soc Servs Dept
(In re TPR to AMK)
105 Wis. 2d 91 (CA 1981)

c. Statutory standard of proof is constitutionally sufficient

LK v BB
(In Int of Baby Girl K)
113 Wis. 2d 429 (1983)

d. Petitioner bears burden of showing termination appropriate

SDS v Rock Cty DSS
(In re TPR of TMS)
152 Wis. 2d 345
(CA 1989)

e. Findings of fact in CHIPS dispositional order may not form basis for non-rebuttable findings of fact in TPR fact-finding hearing

- Burden of proof in TPR fact-finding is clear and convincing

- Burden of proof in CHIPS disposition is greater weight of credible evidence

Door Cty DHFS v Scott S
(In re TPR
of Kristeena AMS)
230 Wis. 2d 460
(CA 1999)
DB v Waukesha Cty
Human Servs Dept
(In Int of JAB)
153 Wis. 2d 761
(CA 1989)

f. Ct may direct a verdict on one or more elements

Manitowoc Cty Human
Servs Dept v Allen J
(In re TPR to Brandon J)
2008 WI App 137
314 Wis. 2d 100

- If a party stipulates to any element, Ct should have a colloquy with party, explaining that stipulation withdraws that element from jury's consideration

St v CLK (In re TPR to
SMH), 2019 WI 14, ¶ 1
385 Wis. 2d 418

g. Denying a party the opportunity to present case-in-chief is error; requires automatic new trial

25 USC 1912(f)
§ 48.31(1)

3) Burden of proof for Indian child TPR

IP v St (In Int of DSP)
166 Wis. 2d 464 (1992)

a. Clear and convincing evidence for grounds

§ 48.028(4)(e), (g)

b. Clear and convincing evidence that active efforts to provide remedial services were unsuccessful

§ 48.028(4)(e)1.
Monroe Cty Dept of Human Servs v Luis R (In re TPR to Vaughn R)
2009 WI App 109
320 Wis. 2d 652

c. Beyond a reasonable doubt

- That continued custody of child by parent or Indian custodian likely to result in serious emotional or physical damage to child

§ 48.028(4)(f)

— Must include testimony of qualified expert

Recommendation, see
IP v St (In Int of DSP)
166 Wis. 2d 464 (1992)

- Unanimous jury verdict may be required on these questions

§ 48.028(2)(g)

d. For preferential order of qualified expert witness, see **JV 17, Sec. 5**

§ 48.424(2), § 48.31(2)

4) Ct hearing unless jury demanded before or during initial hearing

a. Demand for jury may be made by child, parent, guardian, or legal custodian

§ 48.31(2)

b. Jury shall consist of 12 persons unless parties agree to lesser number

MW v Monroe Cty DHS (In re TPR to MAM)
116 Wis. 2d 432 (1984)

c. TPR is civil proceeding

Ch 756, Ch 805
§ 48.293(4)
Ronald JR v Alexis LA (In re TPR to Brandon IR), 2013 WI App 79
348 Wis. 2d 552

- Civil rules regarding discovery, selection of jurors, and stipulations apply

§ 967.04(7)–(10)

d. If child witness, Ct may allow use of audiovisually recorded deposition

§ 48.424(2)

5) Ct may exclude child from hearing

6) Hearing closed to public

a. Persons who may be present

- Parties
- Counsel/GAL/CASA

§ 48.299(1)(ag)

- Child's foster parent or physical custodian
  - — May be excluded from portions of hearing dealing with sensitive personal information
- Witnesses
- Anyone requested by party and approved by Ct
- Anyone Ct finds to have a proper interest in case or work of Ct, including Attys or a person engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 U.S.C § 629h, as determined by the Director of State Cts

St ex rel ER v Flynn
88 Wis. 2d 37 (CA 1979)

— Press may be admitted as having a proper interest in case or work of Ct, subject to discretion of Ct

Ann MM v Rob S (In re TPR of SueAnn AM)
176 Wis. 2d 673 (1993)

b. Persons who may not appear

- Father of child conceived as result of sexual assault does not have standing to appear in TPR
  - — Not unconstitutional to prohibit him from appearing to contest the petition

Ch 785

c. Anyone who divulges information that would identify child or family subject to contempt of Ct

Waukesha Cty DSS v CEW (In Int of CEW)
124 Wis. 2d 47 (1985)

7) Role of child's GAL

a. Full role as child's counsel including voir dire, jury selection and challenges, opening and closing arguments, calling witnesses, and developing facts relating to TPR

§ 48.299(4)(a)

8) Rules of evidence apply

Waukesha Cty DHHS v Teodoro E (In re TPR to

Adrianna AE)
2008 WI App 16
307 Wis. 2d 372
St v Lavelle W
(In re TPR to Idella W)
2005 WI App 266
288 Wis. 2d 504

9) Alternatives to personal appearance of contesting party acceptable only if they afford meaningful participation in the proceedings

§ 48.424(1)

E. At fact-finding hearing, jury, or Judge if jury waived, must determine whether grounds exist for involuntary TPR. If case involves involuntary TPR to Indian child, Ct must determine whether allegations specified in § 48.42(1)(e) have been proved

§ 48.415(1)

1) Abandonment, which (except as noted in para. f., below) is established by proving that

§ 48.415(1)(a)1.

a. Child has been left without provision for its care or support, petitioner has investigated, and for 60 days has been unable to find either parent

§ 48.415(1)(a)1m.

b. Child has been left by parent without provision for child's care or support in a place or manner that exposes child to substantial risk of great bodily harm or death, or

§ 48.415(1)(a)1r.

c. Ct has found under § 48.13(2) or comparable law of other jurisdiction that child was abandoned at less than one year of age or found that parent abandoned child when child under one year of age in violation of § 948.20 or comparable law of other state

§ 48.415(1)(a)2.

d. Child placed out of home by Ct order containing required notice and parent failed to visit or communicate with child for at least 3 months

Heather B v Jennifer B
(In re TPR to Cordell JB)
2011 WI App 26
331 Wis. 2d 666

- 3-month abandonment period must fall within duration of the underlying CHIPS order

§ 48.415(1)(a)3.

e. Child left by parent with any person, parent knows or could discover whereabouts of child, and parent failed to visit or communicate with child for a period of 6 months or longer

Rhonda RD v
Franklin RD
(In Int of Christopher D)
191 Wis. 2d 680
(CA 1995)

- "Left with" includes situation when child remains with relative or other person as result of Ct order

§ 48.415(1)(b)

- Incidental contact between parent and child does not preclude Ct from finding abandonment

- Time period under para. d. or e. above does not include period when parent prohibited by judicial order from visiting or communicating with child

Carla B v Timothy N
(In re TPR to Jessica N)
228 Wis. 2d 695
(CA 1999)

— When Ct order prohibits visitation but not all communication, abandonment includes time periods when there has been no communication

PS v GO (In Int of TPS)
168 Wis. 2d 259
(CA 1992)

- Period of abandonment need not immediately precede filing of petition

St v James P
(In re TPR of Chezron M)
2005 WI 80
281 Wis. 2d 685

- Parent includes biological father before paternity adjudication

§ 48.415(1)(c)
Brown Cty Human Servs
v BP (In re TPR to AP)
2019 WI App 18
386 Wis. 2d 557

f. Abandonment not established under 3-month and 6-month provisions if parent proves all of the following by preponderance of the evidence

- Parent had good cause for having failed to visit with child throughout time period specified

- Parent had good cause for having failed to communicate with child throughout time period specified

- If parent proves good cause for failure to communicate, including good cause based on evidence that child's age or condition would have rendered any communication with child meaningless, that one of following occurred

— Parent communicated about child with child's physical custodian, or if placed outside the home, with agency responsible for care of child during applicable time period, or

— Parent had good cause for having failed to communicate about child with physical custodian or child or agency throughout time period specified

Comment

- Defense set forth in this section takes the place of the previous defense that parent "did not disassociate" himself or herself from the child

§ 48.415(1m)

2) Relinquishment

a. Ct has found under § 48.13(2m) that parent has relinquished custody of child under § 48.195(1m) when child was 72 hours old or younger

Query

b. Does this ground apply to termination of rights of non-relinquishing parent?

§ 48.415(2)

3) Continuing need of protection or services

§ 48.415(2)(a)

a. Child adjudged CHIPS, UCHIPS, or JIPS and placed out of home by Ct disposition, change of placement, revision, or extension order

§ 48.32
§ 938.32

- Does not include consent decree

§ 48.345, § 48.347
§ 48.356(2), § 938.356(2)

b. Statutes require TPR warning on dispositional order placing child outside home and extension, revision

Cynthia E v La Crosse Cty Human Servs Dept (In Int of Jamie L)
172 Wis. 2d 218 (1992)

- Incorporation in order of all statutory TPR grounds meets this requirement

Marinette Cty v Tammy C (*In re TPR of Anthony C*)
219 Wis. 2d 206 (1998)

- Warning not required on temporary physical custody order

St Croix Cty v Michael D (In re TPR to Matthew D)
2016 WI 35
368 Wis. 2d 170

c. Statutes require that last order placing child outside home contain TPR warnings and be issued at least 6 months before filing TPR

- Not fatal for earlier orders to be missing warning, but better practice is to include written notice on all orders

§ 48.415(2)(a)2.b.

d. Responsible agency has made reasonable effort to provide Ct-ordered services, and

§ 48.355(2)(b)1.
Sheboygan Cty DHHS v Tanya MB (In re TPR to Elijah WL)
2010 WI 55
325 Wis. 2d 524

- If services not explicitly stated in dispositional order, see *Sheboygan Cty DHHS v Tanya MB (In re TPR to Elijah WL)*

§ 48.415(2)(a)2.a.

- "Reasonable effort" means an earnest and conscientious effort to take good-faith steps to provide the services ordered by Ct, which takes into consideration the characteristics of EM, parent, or child, level of cooperation of

parent or EM and other relevant circumstances of case

Note

— Ch 48 does not require "reasonable efforts" under some circumstances. Unclear whether that affects factors that must be proved for TPR under § 48.415(2)(a)

St v Raymond C
(In Int of Torrance P)
187 Wis. 2d 10 (CA 1994)

- Americans with Disabilities Act does not change Cty's burden of proof in showing diligent effort

§ 48.415(2)(a)3.

e. Child has been outside the home for a cumulative total period of 6 months or longer pursuant to an order listed under § 48.415(2)(a)1.

- Does not include time spent outside the home as an unborn child

§ 48.415(2)(a)3.
Dane Cty Dept of
Human Servs v JR
(In re TPR to KT)
2020 WI App 5
390 Wis. 2d 326

f. Parent has failed to meet conditions established for safe return of child and, if child has been placed outside home for less than 15 of most recent 22 months, that there is substantial likelihood that parent will not meet conditions as of date on which child will have been placed outside home for 15 of most recent 22 months, not including any period during which child was a runaway from out-of-home placement or was residing in trial reunification home

Eau Claire Cty Dept of
Human Servs v SE
(In re TPR to TLE-C)
2021 WI 56
397 Wis. 2d 462

- Not unconstitutional to proceed under amended statute when underlying CHIPS order was issued before amendment

Kenosha Cty Dept of
Human Servs v Jodie W
(In re TPR to Max GW)
2006 WI 93
293 Wis. 2d 530

- Conditions for return must be tailored to the parent and child, and reliance on impossible condition for return to terminate parental rights denies parent due process

St v Patricia AP
(In Int of Jason PS)
195 Wis. 2d 855
(CA 1995)

- To file TPR under this ground, parent(s) must have been warned using current statutory language

4) Continuing need of protection or services—"Three Strikes"

§ 48.415(2)(am)

a. Child found CHIPS under § 48.13(3), (3m), (10), (10m) three or more times, and each time placed out of home by order containing notice under § 48.356(2)

b. Conditions that led to specified out-of-home placements were caused by the parent(s)

§ 48.415(3)

5) Continuing parental disability

§ 50.33(2)(a), (b), (c)
§ 51.01(2),
(13)(a) or (b), (15)
§ 55.01(2), (5)

a. Parent presently and for at least 2 years cumulative of past 5 years has been inpatient at hospital, licensed treatment facility, or State treatment facility because of mental illness, developmental disability, or other like incapacities, and

§ 48.415(3)(b)

b. Parent's condition likely to be indefinite, and

§ 48.415(3)(c)

c. Child not provided adequate care by relative with legal custody, parent, or guardian

§ 48.415(4)
Steven V
Kelley H (In re TPR to
Alexander V)
2004 WI 47
271 Wis. 2d 1

6) Continuing denial of periods of physical placement or visitation

Dane Cty Dept of
Human Servs v Ponn P
(In re TPR to Diana P)
2005 WI 32
279 Wis. 2d 169

a. This ground is constitutional and may be basis for finding of unfitness under § 48.424(4)

b. Parent denied periods of physical placement by Ct order in action affecting the family, or

Kimberly SS
v Sebastian XL
(In re TPR to Jillian KL)
2005 WI App 83
281 Wis. 2d 261

- Sec. 48.415(4) does not require proof that a Family Ct order included TPR warnings

c. Parent denied visitation under the following CHIPS and JIPS orders

- Dispositional, revision, extension, and

- Order contained warning that continuing denial of visitation is grounds for TPR, AND

d. At least 1 year elapsed without Ct subsequently allowing periods of physical placement or visitation

§ 48.415(5)

7) Child abuse

a. Parent has exhibited pattern of physically or sexually abusive behavior, which is substantial threat to health of child, and

Monroe Cty v Jennifer V
(*In Int of Kody DV*)
200 Wis. 2d 678
(CA 1996)

- Pattern of abusive behavior means more than one act

b. Parent has caused death or injury to child(ren) resulting in felony conviction, or

Reynaldo F v Christal M.
(In re TPR to
Reynaldo F)
2004 WI App 106
272 Wis. 2d 816
Monroe Cty v Jennifer V
(*In Int of Kody DV*)
200 Wis. 2d 678
(CA 1996)

- Felony conviction of parent for causing death or injury to a child may not be grounds for TPR until right of appeal from conviction is exhausted. Exhaustion requirement only applies when appeal involves issues relating to parent's guilt (not other issues, such as sentencing)

c. Any child has previously been removed from parent's home upon CHIPS adjudication under § 48.13(3) or (3m)

§ 48.415(6)(a)

8) Failure to assume parental responsibility

a. Parent or person(s) who may be parent of child has not had a substantial relationship with the child

§ 48.415(6)(b)

b. Substantial parental relationship means

- Acceptance and exercise of significant responsibility for daily supervision, education, protection, and care of child

St v Bobby G (In re TPR
to Marquette S)
2007 WI 77
301 Wis. 2d 531

c. Ct must consider biological father's efforts after he discovers his paternity and before TPR grounds adjudicated

- Ct may consider, not limited by enumeration, whether parent has expressed concern for or interest in support, care, or well-being of child and whether person neglected or refused to provide care or support for child, whether father or possible father has expressed concern for or interest in support, care, or well-being of mother during her pregnancy

LK v BB
(In Int of Baby Girl K)
113 Wis. 2d 429 (1983)

- Father's action before birth of child may provide sufficient basis to conclude he had opportunity to establish substantial parental relationship with child

St v Quinsanna D
(In re TPR to Teyon D)
2002 WI App 318
259 Wis. 2d 429

d. Grounds may be found if quality of care provided does not evidence significant responsibility for child's protection and care

§ 48.415(7)

9) Incestuous parenthood

a. Person whose parental rights to be terminated is also related by blood or adoption to child's other parent

- In degree of kinship closer than 2nd cousin

St v Allen M (*In Int of Tiffany Nicole M*)
214 Wis. 2d 302
(CA 1997)

b. Ground is constitutional

Monroe Cty DHS v Kelli B
(In re TPR to Zachary B)
2004 WI 48
271 Wis. 2d 51

c. Ground can be unconstitutional as applied to particular facts

Monroe Cty DHS v Kelli B
(In re TPR to Zachary B)
2004 WI 48
271 Wis. 2d 51

d. Incestuous parenthood does not necessitate finding of unfitness as to incest victim/parent

§ 48.415(8)

10) Homicide or solicitation to commit homicide of parent

a. Established by showing that parent of child was victim of 1st- or 2nd-degree intentional homicide or 1st-degree reckless homicide or a comparable crime in other jurisdiction, OR

b. Has been the intended victim of a solicitation to commit 1st-degree intentional homicide or a comparable crime in other jurisdiction, AND

c. That person whose parental rights are sought to be terminated has been convicted of that homicide or solicitation as shown by final judgment of conviction

Winnebago Cty
DSS v Darrell A
(*In Int of Amanda A*)
194 Wis. 2d 627
(CA 1995)

d. Homicide that serves as basis for TPR may predate adoption of this statute

§ 48.415(9)(a)

11) Parenthood as a result of sexual assault

a. Child was conceived as a result of sexual assault in violation of § 940.225(1), (2) or (3), § 948.02(1) or (2), § 948.025, or § 948.085

b. May be proved by conviction or other evidence that possible father committed, during a possible time of conception, a sexual assault listed above against mother of child

§ 48.415(9m)

12) Felony against a child

a. A child of respondent was victim of serious felony for which respondent has been convicted as shown by final judgment of conviction

Reynaldo F v Christal M (In re TPR to Reynaldo F)
2004 WI App 106
272 Wis. 2d 816

- Appeal challenging only sentence imposed does not affect finality of conviction

- "Serious felony" is violation of § 940.19(3), 1999 Stats., or §§ 940.01, 940.02, 940.03, 940.05, 940.19(2), (4) or (5), 940.225(1) or (2), 948.02(1) or (2), 948.025, 948.03(2)(a), (3)(a), or (5)(a)1., 2., or 3., 948.05, 948.051, 948.06, 948.08, 948.081, 940.302(2) (if 940.302(2)(a)1.b. applies), or 948.21 resulting in death, or comparable crime under law of US or other state

Brown Cty DHS v SK (In re TPR to RM)
2023 WI App 27
407 Wis. 2d 893

— Neglect resulting in death as party to a crime is only a serious felony if the individual directly committed the crime

b. Ct may also find grounds for TPR under § 48.415(9m)(am) if respondent has committed child trafficking against any child in violation of § 948.051 or other state or federal law

§ 48.415(10)

13) Prior involuntary TPR

§ 48.415(10)(a)

a. Child who is subject of petition has been found CHIPS under § 48.13(2), (3), or (10), or was born after the filing of a TPR petition concerning a sibling

§ 48.415(10)(b)

b. Within 3 years before CHIPS finding above, or within three years before child's birth if child born after TPR petition filed for sibling, Ct-ordered TPR with respect to another child of respondent

Oneida Cty DSS v Nicole W (In re TPR to to Brianca MW)

2007 WI 30
299 Wis. 2d 637

c. Proof of which ground relied on in prior TPR not required

F. Findings of fact and conclusions of law

§ 48.424(3)
Waukesha Cty DSS v
CEW (In Int of CEW)
124 Wis. 2d 47 (1985)

1) Fact-finder does not consider best interests of child

Evelyn CR v Tykila S
(In re TPR to Jayton S)
2001 WI 110
246 Wis. 2d 1

a. During fact-finding, parents' rights are primary

§ 48.424(3)

2) If facts determined by jury

a. Jury may only decide whether any grounds for TPR proved and whether allegations in § 48.42(1)(e) have been proved in involuntary TPR cases involving Indian child

- Ct decides what disposition is in best interest of child

Mrs R v Mr B
(In Int of JLW)
102 Wis. 2d 118 (1981)

b. If jury finds grounds proved, Ct need not terminate parental rights

§ 48.235(6)

c. GAL or Ct may tell jury GAL represents interests of person for whom appointed

§ 48.424(4)

3) If grounds for TPR found, Ct must find parent unfit

Sheboygan Cty
DHHS v Julie AB
(In re TPR to Prestin TB)
2002 WI 95
255 Wis. 2d 170

a. Ct must proceed to disposition after finding parent unfit

- *Julie AB* overrules *St v Kelly S*, 2001 WI App 193, 247 Wis. 2d 144, and language in *BLJ v Polk Cty Dept of Soc Servs (In Int of KDJ)*, 163 Wis. 2d 90 (1991), suggesting intermediate step between fact-finding and disposition

b. Finding of unfitness does NOT preclude dismissal of petition

BLJ v
Polk Cty Dept of Soc

Servs (In Int of KDJ)
163 Wis. 2d 90 (1991)

c. Independent finding of unfitness NOT required if grounds for TPR proved

d. Statutory requirement of finding of unfitness is constitutional

G. Ct action at close of hearing

§ 48.424(4)

1) If grounds proved and unfitness found, Ct immediately proceeds to hear evidence and motions for disposition, EXCEPT

a. Ct may delay and set dispositional hearing date no more than 45 days later (except as provided in § 48.42(2g)(ag) in case of Indian child) if

- All parties agree, or
- Ct report not received and Ct now orders agency under § 48.069(1) or (2) to file report or, in case of Indian child, orders that agency or requests tribal child welfare dept to file report

§ 48.315

b. Ct may grant continuance on showing of good cause

§ 48.23(2)(b)3.

c. If counsel waived by egregious behavior without clear and justifiable excuse, Ct must wait 2 days for disposition

§ 48.424(5)

2) If Ct delays disposition, may transfer temporary custody to agency for placement until disposition

Sheboygan Cty
DHHS v Julie AB
(In re TPR to Prestin TB)
2002 WI 95
255 Wis. 2d 170

3) In deciding disposition, Ct shall consider any report of agency and 6 factors in § 48.426(3)

a. Allude to factors in explaining basis for disposition on record

Sheboygan Cty
DHHS v Julie AB
(In re TPR to Prestin TB)
2002 WI 95
255 Wis. 2d 170

4) Best interests of child is "polestar" at disposition

9. Court Report

§ 48.425(1), (3)

A. Required when petition filed by agency or ordered by Ct

§ 48.425(1m)

1) Agency must prepare medical record within 60 days after date of petition for TPR

§ 48.425(1)

B. Contents of report

1) Social history of child

§ 48.425(1)(am), (1m)

2) Medical record of child prepared within 60 days after date of TPR petition including

a. Medical and genetic history of birth parents

b. Medical and genetic information furnished by birth parents about child's grandparents, aunts, uncles, brothers, and sisters

c. Report of medical exam of either birth parent within 1 year before petition

d. Report of child's prenatal care and medical condition at birth

e. Medical and genetic history of child

f. Any other relevant medical and genetic information

§ 48.425(1)(b)

3) Statement of facts supporting need for TPR

§ 48.425(1)(cm)

4) If Indian child, finding that continued custody by parent or Indian custodian is likely to result in serious emotional or physical damage

§ 48.425(1)(c)

5) If child previously adjudged CHIPS

a. Steps taken by primary person or agency to remedy conditions responsible for Ct intervention

b. Parent's response to and cooperation with services

§ 48.425(1)(cm)

c. If Indian child, must show active efforts per § 48.028(4)(e)2.

§ 48.425(1)(c)

6) If child previously adjudged CHIPS and removed from home, must include paras. 5)a., b., and c. above, and

a. Statement of reasons why child cannot return safely to family

b. Steps taken by primary person or agency to effect safe return home

§ 48.425(1)(c)

c. If permanency plan previously prepared for child, report must also include specific information showing that responsible agency has made reasonable efforts to achieve permanency plan's goal, including, if appropriate, through out-of-state placement

§ 48.425(1)(d)

7) Statement of other appropriate services, if any, which might allow safe return home

§ 48.425(1)(e)

8) Statement applying standard and factors for disposition to case (See **Sec. 10**, *infra*)

§ 48.425(1)(f)

9) If report recommends TPR, statement of likelihood of adoption including

a. Factors preventing adoption

b. Factors facilitating adoption

c. Agency responsible for adoption

§ 48.425(1)(g)

10) If agency determines adoption unlikely or not in child's best interest include

a. Plan for placing child in permanent family setting

- See **JV 9** for permanency planning and ASFA

b. Agency to be named guardian

c. Recommendation that person appointed as guardian under § 48.977(2) continue to be guardian of child, or

d. Recommendation that guardian be appointed for child under § 48.977(2)

§ 48.425(2), (1)(am)
§ 48.422(9), § 48.41

11) Ct may waive Ct report if voluntary TPR but must order birth parent(s) to provide DCF with above medical and genetic information

§ 48.422(9)(b)

a. If birth parent does not comply, Ct must order health-care provider known to have provided care to parent to provide Ct with any health-care records of parent relevant to child's medical condition or genetic history

42 USC 290dd-2
42 CFR pt 2

- Ct order for release of alcohol or drug abuse records subject to federal statutes and regulations

10. TPR Disposition

§ 48.424(4)

A. Time periods

§ 48.41, § 48.424(4)

1) Judge may proceed immediately from receipt of voluntary TPR or TPR after fact-finding to hear evidence and motions for disposition (except as provided in § 48.42(2g)(ag) in case of Indian child or except as noted in paras. a and b. below)

§ 48.23(2)(b)3.

a. If counsel waived by egregious behavior without clear and justifiable excuse, Ct must wait 2 days before holding dispositional hearing

b. Ct may delay and set dispositional hearing date no more than 45 days later if

- All parties agree, or
- Ct report not received and Ct now directs agency to prepare report

§ 48.315

2) Delays, continuances, and extensions may be granted by Ct

a. For good cause in open Ct on record

b. For only as long as necessary

§ 48.424(5)

3) If Ct delays disposition, may transfer temporary custody to agency for placement until disposition

§ 48.427(1)
Dane Cty DHS v Dyanne M (In re TPR to Artavia B)
2007 WI App 129
301 Wis. 2d 731

4) After dispositional hearing, Ct must make findings and required rulings within 10 days

§ 48.427(1)

B. Ct must hear relevant testimony from any party

1) Includes expert testimony and any party making alternative dispositional recommendation

§ 48.299(4)(a), (b)

2) Except as provided in § 901.05 (admissibility of HIV tests), common law and statutory rules of evidence not binding at dispositional hearing

a. Ct must

- Admit testimony having reasonable probative value

- Exclude immaterial, irrelevant, or unduly repetitious testimony
- Give effect to rules of privilege recognized by law
- Apply basic principles of relevancy, materiality, and probative value to proof of all questions of fact
- Note in record objections to evidentiary offers and offers of proof of evidence not admitted

b. Ct may admit hearsay evidence if it has demonstrable circumstantial guarantees of trustworthiness

David S v Laura S
(In Int of Brandon SS)
179 Wis. 2d 114 (1993)

3) If necessary, Judge must call and examine witnesses who are necessary to determination of best interests

a. Failure to do so is erroneous exercise of discretion

§ 48.427(1m)

4) Ct shall permit foster parent or physical custodian to make written or oral statement, or to submit a written statement before disposition but this does not make foster parent or physical custodian a party

St v Gregory LS
(In Int of Gregory RS)
2002 WI App 101
253 Wis. 2d 563

5) Ct may consider changes in family conditions since petition filed

§ 48.426

C. Ct must consider statutory standard and factors in addition to any Ct report submitted by agency

§ 48.426(2)
Kegel v Oneida Cty DSS
(In re TPR to Jessica K)
85 Wis. 2d 574 (1978)
Minguey v Brookens
(In re TPR to TRM)
100 Wis. 2d 681 (1981)

1) Standard—best interests of child

a. Prevailing factor

RDK v Sheboygan Cty
Soc Servs Dept
(In re TPR to AMK)
105 Wis. 2d 91 (CA 1981)

b. Continuing welfare of State's children is compelling State interest

- Need not be specifically labeled

§ 48.426(3)

2) Factors, not limited by enumeration

a. Likelihood of child's adoption after TPR

b. Age and health of child at time of disposition and, if applicable, at time child removed from home

c. Whether child has substantial relationships with parent or other family members and whether it would be harmful to child to sever those relationships

St v Margaret H (In re TPR to Darryl T-H)
2000 WI 42
234 Wis. 2d 606

- Requires Ct to consider effect of legal severance of relations on emotional and psychological bonds between child and family

d. Wishes of child

e. Duration of separation of parent from child

f. Whether child will be able to enter more stable and permanent family relationship upon TPR taking into account

- Conditions of child's current placement
- Likelihood of future placements
- Results of prior placements

§ 48.427(2)

D. Ct may dismiss petition if evidence does not warrant TPR

AB v PB (In Int of AB)
151 Wis. 2d 312
(CA 1989)

1) Parental rights may not be voluntarily terminated merely to advance the parents' emotional or financial interests

E. Available dispositions upon TPR of all living parents

§ 48.427(3m)(a)

1) Transfer guardianship and custody pending adoptive placement to

§ 48.57(1)(e), (hm)

a. Cty Dept authorized or licensed to accept guardianship and place children

§ 48.61(5)

b. Child welfare agency licensed by DCF to accept guardianship and place children

§ 48.427(3m)(a)

c. DCF

d. Relative with whom child resides if relative has filed adoption petition or relative is kinship care relative or is receiving payments under § 48.62(4)

e. Individual appointed guardian by Ct of foreign jurisdiction

§ 48.427(3m)(b)

2) Transfer custody to individual in whose home child has resided for at least 12 consecutive months immediately before TPR or to relative

a. Guardianship must be transferred to agency listed in para. 1) above

§ 48.427(3m)(c)

3) Appoint guardian under § 48.977 and transfer guardianship and custody of child to guardian

§ 48.427(3p)

4) If guardian previously appointed under § 48.977 and an order is entered under § 48.427(3m)(a) or (b), Ct shall terminate guardianship under § 48.977

§ 48.427(5)

5) In placing Indian child, must comply with § 48.028 placement preferences

F. Upon TPR disposition

§ 48.427(6)(a)
§ 48.432(3)(b)

1) Ct must inform TPR birth parent of statutory provisions regarding access to medical and genetic information with identifying information deleted

§ 48.432(1)(am)

a. "Birth parent" means

- Mother designated on child's original birth record
- Adjudicated father, or husband of mother at time child conceived or born, or when parents intermarry

§ 48.432(1)(b)

b. "Individual" means a person whose birth parents' rights have been terminated in this State

§ 48.432(2)(b)

c. Birth parent may file relevant medical or genetic information about child or parents with DCF or contracting agency

§ 48.432(3)(a)

d. On request, DCF must release medical and genetic information to

- Individual or adoptee age 18 or older
- Adoptive parent of adoptee

- Guardian or legal custodian of individual or adoptee
- Offspring of individual or adoptee if 18 or older
- Agency or social worker providing services to individual or adoptee
- Parent, guardian, or legal custodian of offspring of deceased individual or adoptee, if offspring is under 18 years of age

§ 48.427(6)(a)
§ 48.433(11)
Wis Admin Code ch DCF 53

2) Ct must inform TPR birth parents of statutory provisions regarding access to identifying information about parents

a. See para. 1) above for definitions

§ 48.433(2)

b. Birth parent may file affidavit with DCF authorizing release to child of original birth certificate and any other available information about birth parent's identity and location

- May be revoked at any time in writing

§ 48.433(3)

c. DCF may release identifying information to

- Individual or adoptee 18 or older

§ 48.433(5)

— If birth parent affidavit on file

§ 48.433(9)

d. If information may not be disclosed, requester may petition Ct to order disclosure

- Petition shall be granted for good cause

§ 48.427(6)(a), § 48.434

3) Ct must inform birth parents of statutory provisions regarding release of identifying information by an agency when authorized

a. Adoptive parent and birth parent may file with adoption agency written authorization to release identity and location information to the other. Authorization may be revoked at any time in writing

§ 48.43(4)

4) Ct must furnish certified copy of TPR order to

a. Agency given guardianship for adoptive placement, or

b. Person appointed as child's guardian under § 48.977(2), and

c. Upon request, furnish certified copy of child's birth certificate and transcript of testimony in TPR hearing to above

§ 48.427(6)(b)

5) Ct must forward to DCF

a. Name and date of birth of child

b. Names and current addresses of child's birth parents, guardian, and legal custodian

c. Medical and genetic information obtained from birth parents or Ct report

d. Information relating to child's membership or eligibility for membership in Indian tribe, if Ct knows or has reason to know that child is Indian child

§ 48.43(6m)

6) If parent present in Ct, Ct must provide written notice of time periods for appeal, which parent must sign and counsel must file

§ 48.427(7)

7) Ct may inform parent(s) orally and in writing that prior involuntary TPR is ground for future TPR under § 48.415(10)

G. Contents of TPR dispositional order

§ 48.43(1), § 48.426
RMC Form JC-1639
RMC Form JC-1638

1) Findings and disposition in accordance with the statutory standard and factors (See **Sec. C.** above)

§ 48.43(1)

2) Reasons for dismissal, if Ct dismissed petition

§ 48.43(1)(a)

3) Identity of agency or individual that has received or will receive guardianship or custody and identity of agency responsible for securing adoption or establishing permanent family setting

§ 48.43(1)(c)

a. If agency receives custody, order must include permanency plan

b. If permanency plan not prepared or Ct order not consistent with plan

- Agency must prepare plan consistent with order, or
- Agency must revise plan to conform to order, and

- Agency must file plan within 60 days from date of order

c. See **JV 9** for permanency planning and ASFA

§ 48.43(1)(b)

4) Identity of agency and persons responsible if child in need of continued care and treatment

§ 48.43(5)

5) Any details Ct wishes to specify to be covered in agency custodian's annual reports regarding particular aspects of child's care and treatment, development, and special needs

§ 48.427(7)

6) Warning regarding grounds for TPR under § 48.415(10), prior involuntary TPR

H. Effect of TPR

§ 48.43(2)

1) TPR permanently severs all legal rights and duties between parent and child

§ 48.43(2)

2) Relationship between child and siblings and other relatives is not extinguished until adoption order

§ 48.43(3)

3) If only one parent consents to TPR or grounds found to exist for only one parent, rights of that parent may be terminated without affecting rights of other parent

11. Post-TPR Proceedings

A. Relief from judgment

§ 48.46(1)

1) Parent who contested TPR may at any time within one year after order, petition Ct for rehearing on ground that new evidence has been discovered affecting the advisability of original adjudication

§ 48.46(1m)

a. Except if order of adoption is entered within one year, petition must be filed before adoption order or within 30 days after TPR, whichever is later

b. Upon showing that evidence exists, Ct must order new hearing

§ 48.46(2)

2) Parent who consented to or did not contest TPR may move for relief from judgment within 30 days after entry of judgment or order on grounds specified in § 806.07(1)(a), (b), (c), (d) or (f)

§ 48.46(2)

a. Motions under § 48.46(2) and appeals to Ct of Appeals are exclusive remedies for such a parent to obtain new hearing

§ 48.43(6)

B. Judgments are final and appealable under § 808.03(1) (appeals as of right) and subject to a petition for rehearing or a motion for relief only as provided in § 48.46 and, in case of Indian child, in § 48.028(5)(c) and (6)

§ 809.107(1)

1) Applies to appeal of judgment under § 48.43 and supersedes all inconsistent provisions of Ch 48

Brown Cty v Edward CT
(*In re TPR of Ashley AT*)
218 Wis. 2d 160
(CA 1998)

a. No-merit report must be filed within time set by § 809.107

§ 808.04(7m)

2) Appeal from judgment or order granting or denying TPR shall be initiated by filing notice of intent to appeal with the clerk of the Trial Ct within 30 days after the date of entry of the judgment or order appealed from

§ 809.107(2)(bm)6.

a. Must be signed by appellant and appellant's counsel (if any)

Carla B v Timothy N
(In re TPR to Jessica N)
228 Wis. 2d 695
(CA 1999)

b. Filing of notice of intent, not service, provides Ct with jurisdiction over TPR appeal

§ 809.107(3)

3) Within 5 days after notice of intent to appeal filed, clerk of Circuit Ct must, if person filing requests representation by SPD, send to SPD appellate intake office copy of notice of intent that shows date on which notice was filed; copy of judgment or order specified in notice, showing date on which judgment or order was entered; list of Ct reporters for each proceeding in action in which judgment or order entered; and list of proceedings for which transcript already has been filed with clerk of Circuit Ct

a. If no request for SPD, judgment or order, list of reporters, and list of proceedings for which transcript has already been filed goes to person or person's Atty if one has been retained

§ 809.107(4)

4) Within 15 days after SPD receives materials from clerk of Circuit Ct, SPD shall appoint counsel and request transcript of Ct reporter's verbatim record and copy of Circuit Ct case record

a. Within 15 days after filing notice, if no request for SPD, appellant shall request a transcript of Ct reporter's verbatim record and may request copy of the Circuit Ct case record

MLB v SLJ
117 S. Ct. 555 (1996)

b. Indigent parent wishing to appeal must be provided with transcript

§ 809.107(4m)

5) Within 30 days after transcript requested, Ct reporter shall file transcript with Circuit Ct and serve copy of transcript on appellant; also, within 30 days after Ct record requested, Clerk of Circuit Ct shall serve copy of Circuit Ct case record on appellant, and shall indicate in case record date and manner of service

§ 809.107(5)

6) Within 30 days after later of service of transcript or Circuit Ct case record, unless extended under § 809.82, appellant shall file and serve notice of appeal and docketing statement as provided in § 809.10(1)

§ 809.107(5)(b)

7) Clerk of Circuit Ct shall transmit record to Ct of Appeals as soon as record prepared but no later than 15 days after filing of notice of appeal

§ 809.107(6)

8) TPR appeals require an abbreviated briefing schedule and a decision by Ct of Appeals within 30 days after filing of appellant's reply brief or a statement that a reply brief will not be filed

9) Petition for review in Supreme Ct shall be filed within 30 days after decision of Ct of Appeals; Supreme Ct shall give preference to these petitions, but time limit for decision not imposed by statute

C. ICWA

§ 48.028(5)(c);
see also 25 USC 1914

1) Within 2 years after order granting adoption of Indian child, parent may petition Ct to invalidate any TPR on showing consent to TPR was obtained by fraud or duress

25 USC 1913(c)

2) If voluntary TPR, consent may be withdrawn for any reason at any time before entry of final decree of termination or adoption

50 USC 3931

D. Persons in military service

1) If judgment rendered against person in military service or within 60 days after service, judgment may be opened, upon application of person or his/her Atty, provided

a. Servicemember appears to have been materially affected by military service in making defense, AND

b. Servicemember appears to have meritorious or legal defense to all or part of action, AND

c. Application is filed within 90 days after termination of or release from service

§ 48.43(7)

E. If permanent adoptive or subsidized guardianship placement not in progress 2 years after entry of order and DCF is guardian and custodian

1) DCF may petition Ct to transfer legal custody to Cty Dept

§ 48.43(7)

a. Except DCF may not petition to transfer custody of child whose parent relinquished custody under § 48.195

2) Ct must transfer custody

3) DCF remains child's guardian

§ 48.437

12. Change in Placement, Post-TPR

§ 48.437(1)(a)1.

A. Request for change in placement post-TPR may be made by:

1) Agency appointed as guardian

2) DA

3) Corp Counsel

B. Notice

§ 48.437(1)(a)2.

1) Contents of written notice:

a. Name and address of new placement

b. Reasons for proposed change in placement

c. Whether the new placement is certified as a qualified residential treatment program under § 48.675

d. Statement why new placement preferable

e. Statement how new placement satisfies treatment objectives of treatment plan or permanency plan

f. If Indian child, statement of compliance with § 48.028(7)(b), (c), or (e)

§ 48.437(1)(a)1.

2) Sent to:

a. Child, child's counsel or GAL, legal custodian, foster parent or other physical custodian, operator of facility in which child is living, agency responsible for securing adoption of child or for establishing child in permanent family setting, Indian child's Indian custodian and tribe

§ 48.437(1)(a)2.

3) Notice to be filed with Ct same day sent

§ 48.437(1)(a)3.

4) If the request is for placement into an RCCCY, group home, or shelter care facility certified under § 48.675, the following information is to be provided at the time of the notice, or if not available, no later than 10 days after the notice is filed: a standardized assessment and recommendation from a qualified individual addressing

a. Whether proposed placement will provide child with the most effective and appropriate level of care in least restrictive environment

b. How placement is consistent with short-term and long-term goals for the child, as specified in permanency plan

c. Reasons why child's needs can or cannot be met by child's family or in a foster home. Shortage or lack of foster homes is not an acceptable reason for determining that child's needs cannot be met in foster home

d. Placement preference of the family permanency team under § 48.38(3m) and, if that preference is not the placement recommended by the qualified individual, why that recommended placement is not preferred

§ 48.437(1)(a)4.

5) If, for good cause shown, the above information cannot be provided within the 10 days, the intake worker or agency responsible shall submit it no later than 30 days after the date on which the placement is made

Note: "Qualified individual: is defined as a trained professional or licensed clinician who is not an employee of the State agency and who is not connected to, or affiliated with, any placement setting in which children are placed by the State.

§ 48.02(17t)

"Standardized assessment" means an assessment, using a tool determined by DCF, of the strengths and needs of a child to determine appropriateness of a placement in a residential care center, group home, or shelter care facility certified as qualified residential treatment program under § 48.675. The definition under § 48.01(17t) does not apply to § 48.62(8)(b)

C. Hearing/No Hearing

§ 48.437(1)(bm)

1) Upon receipt of notice, Ct shall review and decide:

a. Whether to hold hearing before ordering change in placement; or

b. Enter order changing placement as proposed without hearing

§ 48.437(1)(bm)

2) If Ct holds hearing:

a. Within 10 days after notice filed, but at least 3 days before hearing, Ct to provide hearing notice to:

- Agency-appointed guardian, DA or Corp counsel, child, child's counsel or GAL, legal custodian, foster parent or other physical custodian, operator of facility in which child is living, agency responsible for securing adoption of child or for establishing child in permanent family setting, Indian child's Indian custodian and tribe

- May not change placement until 10 days after notice of change in placement is filed

§ 48.437(1)(bm)

3) If Ct changes placement without hearing, within 10 days after notice is filed, shall enter order and provide a copy to those listed at **Sec. C.**2)a., above

§ 48.437(2r)

4) If change in placement would remove child from foster home or other physical custodian, foster parent or other physical custodian shall be given right to be heard through written or oral statement at hearing, or written statement prior to hearing

a. Foster parent or other physical custodian not a party solely on basis of receiving notice and being given right to be heard

§ 48.437(1)(c), (2v)

D. Contents of order

1) ASFA findings—see Ch. **JV 9, Sec. 2**

2) Order for child be continued in the placement and care responsibility of DCF or Cty Dept and for DCF or Cty Dept to be assigned continuing responsibility for providing services, if order changes placement of child who is under guardianship of DCF or Cty Dept

3) Statement that Ct approved recommended placement or, if not, that Ct has given bona fide consideration to all recommendations

4) If siblings out-of-home (or for whom out-of-home placement sought), findings that agency has made reasonable efforts as to placement, frequent visitation, or other ongoing interaction

5) If Ct changes placement to RCCCY, group home, or shelter care facility certified as qualified residential treatment program under § 48.675, then Ct shall, no later than 60 days after placement is made, issue an order making all of the findings required under § 48.217(2v)(d)1. (see paras. a.–d. below), the answers to which do not affect whether the placement may be made, after considering the standardized assessment and the recommendation of the qualified individual who conducted the standardized assessment

a. Whether needs of child can be met through placement in foster home

b. Whether placement of child in RCCCY, group home, or shelter care facility certified under § 48.675 provides most effective and appropriate level of care for child in least restrictive environment

c. Whether the placement is consistent with short-term and long-term goals for the child, as specified in the permanency plan

d. Whether Ct approves or disapproves of the placement

6) If Indian child, ICWA findings—See Ch **JV 17**

§ 48.355(2d)(bm)

7) "Contrary to welfare" findings and findings that special circumstances exist that reasonable efforts are not necessary (§ 48.355(2d)(b)1.–5.) must be specific and made on a case-by-case basis (not merely cite the statute)

§ 48.38(4m)

8) If findings under § 48.355(2d)(b)1.–5., must hold permanency hearing within 30 days

9) If Indian child, the order shall comply with § 48.028(7)(b), (c), or (e)

§ 48.437(2)

E. If emergency necessitates immediate change:

1) Agency appointed as guardian may remove to new placement without prior notice

2) Notice of emergency change in placement sent to all persons listed at **Sec. C.**2)a. above and filed with Ct within 48 hours after change

§ 48.437(1)(a)3.

3) If request is for placement into an RCCCY, group home, or shelter care facility certified under § 48.675, the following information must be provided at the time of the notice, or if not available, no later than 10 days after the notice is filed: a standardized assessment and recommendation from a qualified individual addressing

a. Whether proposed placement will provide child with most effective and appropriate level of care in least restrictive environment

b. How placement is consistent with short-term and long-term goals for the child, as specified in permanency plan

c. Reasons why child's needs can or cannot be met by child's family or in a foster home. Shortage or lack of foster homes is not an acceptable reason for determining that child's needs cannot be met in foster home

d. Placement preference of the family permanency team under § 48.38(3m) and, if that preference is not the placement recommended by the qualified individual, why that recommended placement is not preferred

e. If standardized assessment and recommendation are not available at time of change-in-placement order, then Ct must defer making findings under § 48.437(2v)(d)1. Ct must issue order making the required findings no later than 60 days after date of placement

4) Ct may hold hearing

5) Child may be placed in licensed public or private shelter care facility as transitional placement for not more than 20 days, or in any placement authorized under § 48.345(3)

§ 48.437(3)

F. Prohibited placements

1) May not change placement to placement in the home of a person who has been convicted of the homicide of a parent of the child under § 940.01 or § 940.05, if the conviction has not been reversed, set aside, or vacated

a. Unless Ct determines by clear and convincing evidence that placement is in best interest of child (shall consider wishes of child)

§ 48.437(4)

G. Effective period

1) Until the order is modified or terminated by further order

2) An order granting adoption terminates a change-in-placement order

3) An order transferring guardianship and custody to an individual terminates a change-in-placement order

H. Venue

§ 48.185(5)

1) SHALL be in the Cty where the TPR was issued

13. Appointment of Guardian for Child

A. See JV 16

RMC Form JD-1753

14. Notice Concerning Grounds to Terminate Parental Rights

A. See RMC Form

JV 14: ADOPTION

1. Availability of Adoption

§ 48.81

A. Any child present in Wis at time adoption petition is filed may be adopted if any of the following

1) Both of child's parents are deceased

2) Parental rights terminated of

a. Both parents

b. One parent and stepparent adoption

c. One parent and other deceased

§ 48.839(3)(b)

3) Child is citizen of foreign jurisdiction and guardian to adopt

4) Child is being adopted under § 48.97

§ 48.82

B. Who may adopt

1) Must be resident of State

2) Following residents eligible to adopt a child

a. Husband and wife jointly or either husband or wife if other spouse is parent of child

Georgina G v Terry M
(In Int of Angel Lace M)
184 Wis. 2d 492 (1994)

- Nonmarital partner of parent may not adopt

b. An unmarried adult

§ 48.82(3)

3) Adoptive parents and child to be of same religious faith if requested by birth parent and practicable

§ 48.84

4) Proposed adoptive parent who has not previously adopted a child must complete preadoption preparation training

§ 48.82(4), (5), (6)

5) May not deny adoption to otherwise qualified person because of

a. Religious belief in spiritual healing

b. Physical handicap

c. Race, color, ancestry, or national origin

C. See Ch 882 for adoption of adults

2. Jurisdiction and Venue

§ 48.83(1), § 48.14(3)

A. Upon filing of petition, Juv Ct of Cty where proposed adoptive parent or child resides or Cty where petition for TPR was filed or granted has exclusive jurisdiction over child (except as provided in § 48.028(3)(b) in Indian child custody proceeding)

1) Jurisdiction continues until petition withdrawn, denied, or granted

§ 48.83(2)

2) If adoption denied, jurisdiction over child reverts to Ct that appointed guardian

a. Unless appointing Ct is from another state or foreign jurisdiction

- Then jurisdiction in Ct of Cty where child is

§ 48.028
25 USC 1901–1963
81 OAG 60

B. Indian Child Welfare Act (ICWA)

25 USC 1903(1)
§ 822.04

1) Supersedes provisions of Ch 48 and Ch 822 in child custody proceedings governed by Act including

a. Preadoptive placements

b. Adoptive placements

Adoptive Couple
v Baby Girl
133 S. Ct. 2552 (2013)
Kewaunee Cty DHS v RI
(In re TPR to MJ)
2018 WI App 7
379 Wis. 2d 750

c. Some provisions of ICWA and WICWA might not apply if the Indian parent has never had custody of the child

25 USC 1921

2) When state law provides higher standard of protection to rights of parent or Indian custodian than does ICWA, Ct must apply state standard

25 USC 1911(a)
§ 48.028(3)(b)

3) Indian tribe has exclusive jurisdiction over Indian child involved in child custody proceeding who resides or is domiciled within reservation, and over Indian child that is a ward of the tribal Ct, regardless of residence or domicile

Native Village of Venetie IRA Council v Alaska
944 F2d 548
(9th Cir 1991)

a. Indian tribe has concurrent jurisdiction with State over Indian child involved in child custody proceeding who does not reside or is not domiciled within reservation

25 USC 1911(b)
§ 48.028(3)(c)

4) If parent, Indian custodian, or child's tribe requests, Juv Ct must transfer child custody proceedings of Indian child not domiciled or residing within reservation to tribe unless

a. Good cause exists to deny transfer

b. Either parent objects

c. Tribal court declines transfer

25 USC 1915
§ 48.028(7)

5) ICWA specifies preference, in absence of good cause to contrary or different tribal preference, for placement with

a. Member of child's extended family

b. Other members of child's tribe

c. Other Indian families

d. See good cause considerations as described in § 48.028(7)(e)/§ 938.028(6)(d)

§ 48.83(1)

C. Venue in Cty where proposed adoptive parent or child resides or Cty where petition for TPR was filed or granted at time of filing petition (except as provided in § 48.028(3)(b))

Comment

1) If birth mother pregnant when petition filed, child deemed present where birth mother is

2) If counties different, Ct may transfer case to Cty where proposed adoptive parent resides

§ 48.831

3. Guardianship for Children Without Living Parent

A. Statutory procedure used for child without living parent if finding as to adoptability of child is sought

B. See JV 16 for procedure

4. Adoptive Placements Not Requiring Court Order

§ 48.833

A. By agency

1) Agencies that may place child for adoption

a. DCF

§ 48.57(1)(e), (hm)

b. Cty Dept authorized or licensed to accept guardianship and place children

§ 48.60

c. Licensed child welfare agency

§ 48.833

2) Agencies in para. 1) above may place a child in licensed foster home if guardian of child or placement made at request of another agency that is guardian of child, if

a. Investigation made under § 48.75(3) has been supplemented to evaluate whether the home is suitable for the child, and

b. Proposed adoptive parents have completed the preadoption preparation required under § 48.84(1) unless agency determines that proposed adoptive parents are not required to complete preparation

§ 48.63

3) Agencies in para. 1) above may place a child in a proposed adoptive home if requested by parent with custody and by proposed adoptive parent(s)

§ 48.834

4) Before placing child for adoption, agency shall consider availability of adoptive placement with a relative of child identified in child's permanency plan or otherwise known to agency, and, if child has siblings who have been adopted, agency shall make reasonable efforts to place child with siblings' adoptive parent, unless contrary to safety or well-being of child or siblings

§ 48.833

5) When child placed by agency in licensed foster home for adoption, agency must enter written agreement with proposed adoptive parent

a. Agreement to state date when child placed

§ 48.028(7)

6) If Indian child, see placement preferences at **JV 17, Sec. 7.B.**, and good cause considerations as described in § 48.028(7)(e)/§ 938.028(6)(d)

§ 48.835

B. By parent with relative

§ 48.835(2)

1) Parent having custody may place child in home of relative of the child for adoption

§ 48.835(1)

2) Parent must have physical custody

a. Custody must not be in violation of custody order issued by Ct

b. Physical custody does not include period of physical placement with parent who does not have legal custody

§ 48.835(3)

3) TPR petition required

a. If parent has not filed TPR petition, relative with whom child placed must file when adoption petition filed

b. For stepparent adoptions, TPR petition needed only for parent who does not have custody

§ 48.835(4)

c. Adoption hearing can be held immediately after entering TPR order

5. Independent Adoptions—Court Order Required

A. If an Indian child, ICWA must be reviewed and complied with as required. See Sec. 7, *infra*

§ 48.837

B. Parent who has custody of child may place child for adoption in home of proposed adoptive parent(s)

§ 48.837(1)

1) Ct approval necessary

§ 48.835(1)

2) Parent must have physical custody

a. Custody must not be in violation of custody order issued by Ct

b. Period of physical placement with parent who does not have legal custody is not custody

§ 48.62

3) Home where child to be placed must be licensed as foster home

§ 48.837(1m)

4) If out-of-state home, must meet that state's criteria for preadoptive placement

§ 48.837(1), (1m)

C. Both custodial parent and proposed adoptive parent(s) join in filing petition for adoptive placement

§ 48.837(2)

D. Petition for adoptive placement must be verified and contain

1) Name, address, and age of child or expected birth date

2) Name, address, and age of birth parents and proposed adoptive parents

3) Identity of any person or agency that solicited, negotiated, or arranged placement of child with proposed adoptive parents

§ 48.837(2)(d)

4) Allegation that the proposed adoptive parents have completed preadoption preparation per § 48.84

§ 48.837(2)(e)

5) If the child is an Indian child, the names and addresses of the Indian child's Indian custodian, if any, and tribe, if known

§ 48.837(3), § 48.42

E. Petition for voluntary consent to TPR must be filed with petition for adoptive placement

F. Ct's responsibilities when petition for adoptive placement filed

§ 48.837(4)(a)

1) Hold hearing on petitions within 30 days but not before birth of child

§ 48.837(4)(b), § 48.23

2) Appoint counsel or GAL

§ 48.23(3), (5)
§ 48.235(1)(a)

a. At any time, upon request or own motion, Ct may appoint

- GAL for child or any party
- Counsel for child or any party unless counsel of own choosing retained

§ 48.235(1)(c)

b. GAL required for child in all TPR cases

§ 48.23(2)(a)

c. GAL required for parent age 17 or younger for voluntary TPR

§ 48.23(2)

d. Counsel for parent age 18 or older not required for voluntary TPR

§ 48.235(1)(g)

e. GAL required for parent determined to be incompetent

Recommendation

f. Good policy to appoint counsel in all TPR cases

§ 48.23(2g);
see § 48.23(2), (4)

g. In contested adoption cases in which ICWA applies, Indian parent or Indian custodian has right to counsel

§ 48.837(8)

3) Same Atty may not represent adoptive parents and either birth parent

§ 48.837(4)(c)
§ 48.57(1)(e) or (hm)

4) Order DCF or Cty Dept authorized or licensed to accept guardianship and place children to investigate placement, interview each petitioner, provide counseling if requested, and report recommendations to Ct at least 5 days before hearing. If ICWA case, Ct may request tribal child welfare dept to prepare report

§ 48.837(4)(c)

a. Report of licensed child welfare agency or, if Indian child, tribal child welfare dept, may be accepted in lieu of Ct-ordered report if agency investigated placement and interviewed petitioners

§ 48.831(2)
§ 48.837

b. In ICWA case, above requirement may be performed by tribal child welfare dept of Indian child's tribe if that dept consents

- Recommendations are to comply with ICWA placement preferences unless good cause shown. See **JV 17**

§ 48.837(7)

c. Proposed adoptive parents must pay for investigation according to DCF fee schedule based on ability to pay

Comment

- Licensed child welfare agencies set own fee

§ 48.837(4)(e)
§ 767.804
§ 767.805(1)

5) Determine whether paternity conclusively determined from genetic test results, adjudicated, or acknowledged

a. Must be done before TPR or adoptive placement hearing

§ 48.837(4)(e)
§ 48.423

b. If paternity not conclusively determined from genetic test results, adjudicated, or acknowledged, whether or not declaration of paternal interest filed, Ct must attempt to determine paternity and rights of any person who might be

child's father

c. May not hold hearing on placement for adoption or TPR of petitioning birth parent unless parental rights of nonpetitioning birth parent, whether known or unknown, have been terminated

§ 48.837(4)(d)

6) Ct may, at request of petitioning birth parent or on own motion, order child taken into custody and placed in licensed home other than home of proposed adoptive parents or relative of proposed adoptive parents pending hearing on petition

§ 48.837(4)(d)
§ 48.028(7)

a. If Indian child, any such placement must comply with ICWA placement preferences unless good cause shown. See **JV 17** (ICWA)

§ 48.837(7)

b. Proposed adoptive parents must pay for care if adoption subsequently completed

§ 48.837(5)

G. Hearing procedure

1) Persons who must attend hearing on petition for adoptive placement

a. Child if 12 years or older

- May be waived by Ct on showing of good cause

b. Each petitioner

Recommendation

c. All GALs should be present

2) Persons who must attend hearing on TPR petition

a. Child if 12 years or older

- May be waived by Ct on showing of good cause

b. Each parent having custody of child

c. Parent may consent to proposed adoptive parents' presence at hearing

- Ct must approve

Recommendation

d. All GALs should be present

Recommendation

e. Atty for adoptive parent(s) should attend all hearings

§ 48.837(6)

3) Order of hearings

a. Determination of paternity

b. TPR of nonpetitioning birth parent, if applicable

c. Petition for adoptive placement

d. Petition for TPR of petitioning birth parent

- If proposed placement is approved, hearing on TPR to proceed immediately
- See **JV 13** for TPR procedure

Comment

e. Hearings statutorily required to be held in this order

- So that petitioning birth parent learns whether Ct has approved adoptive placement before s/he consents to TPR
- If hearings held in chambers or conference room, proceedings flow more smoothly

H. Hearing on petition for adoptive placement

1) Held before hearing on TPR petition

§ 48.837(5)

2) Child 12 or older and petitioners must be present

a. Child's presence may be waived by Ct on showing of good cause

§ 48.837(6)(b)

3) Ct must review, at beginning of hearing, report submitted under § 48.913(6), (7)

a. Must determine whether any payments coercive to birth parent or alleged/presumed father or impermissible under § 48.913(4)

§ 948.24(1)

- Conditioning payment of birth expenses and legal and other services rendered in connection with adoption upon transfer or surrender of child or TPR or finalization of adoption creates rebuttable presumption of coercion

b. If Ct finds coercion must

- Dismiss petitions or

- Amend agreement to delete coercive conditions if parties agree

§ 48.837(6)(b)

c. If Ct finds impermissible payments, may dismiss the petition and refer to DA

§ 48.837(6)(c)

4) After hearing, Ct must

a. Make findings on allegations in petition

Recommendation

- Inquire regarding any change in financial arrangements or payments as stated in petition

b. Find facts contained in Ct-ordered report

c. Conclude whether placement in best interests of child

Recommendation

d. Ensure detailed findings prepared

e. Proceed immediately to TPR hearing

f. See **JV 13** for TPR hearing procedure

§ 48.837(6)(d)

I. If TPR ordered and placement approved, Ct must

1) Appoint one of following as guardian

a. DCF

§ 48.57(1)(e), (hm)

b. Cty Dept authorized or licensed to accept guardianship and place children

§ 48.61(5)

c. Child welfare agency licensed to accept guardianship and place children

§ 48.837(6)(d)
RMC Form JC-1642

2) If child has not been placed with adoptive parent(s), order child to be placed with prospective adoptive parent(s). If child has already been so placed, order that child be maintained in that placement

3) Enter order for TPR and order for Approval of Adoptive Placement

§ 48.427(6)(a), § 48.432
§ 48.433, § 48.434

4) Inform birth parent of statutory requirements regarding access to medical and genetic information and identifying information about parents

§ 48.95

J. If petition withdrawn or denied, Ct shall order case transferred to Ct assigned to exercise jurisdiction under Chs 48 and 938 for appropriate action

1) If parental rights have been terminated and guardian is DCF, licensed child welfare agency or Cty Dept, minor remains in legal custody of the guardian

6. Adoption Petition

A. When adoption petition may be filed

§ 48.90(3)

1) Prerequisite to filing adoption petition is compliance with statutory adoptive placement procedures, including placements

§ 48.833

a. By agencies

§ 48.835

b. By parents with relatives

§ 48.837

c. By parents with nonrelatives

§ 48.839

d. Through Cts of foreign jurisdictions

§ 48.988

e. Under ICPC

25 USC 1901–1963

f. Under ICWA

Ch 822

g. Under UCCJEA

§ 48.90(1)

2) Adoption petition may be filed at any time if

Scott A v Garth J
(In Int & Adoption
of Abigail M)
221 Wis. 2d 781
(CA 1998)
§ 48.02(15)

a. One of petitioners is relative of child by blood or adoption, except parents whose rights terminated or persons whose relationship to child is derived through such parents

b. Petitioner is child's stepparent

c. Petition is accompanied by written approval of guardian

§ 48.839

d. Petitioner is proposed adoptive parent of child who is not US citizen and not under agency guardianship

§ 48.90(2)

3) Petition may otherwise be filed after child has been in home of petitioners for six months or more

§ 814.61(1)(c)5.

4) Filing fee should not be charged

B. Ct's responsibilities upon filing of adoption petition

§ 48.88(1m)

1) Schedule hearing within 90 days after filing

2) Send notices of hearing within 3 days after signing order for hearing to

a. Guardian of child

b. Agency required to investigate

c. DCF when its recommendation required

d. Child age 12 or older

NOTE: Service by email or fax may be valid under § 801.14(2).

§ 48.88(2)

3) Order necessary investigation

§ 48.88(2)(a)

C. Investigation

1) Purpose of investigation to determine

a. Whether child is proper subject for adoption

b. Whether petitioner's home is suitable

2) Investigation conducted

a. By agency that has guardianship

- Unless recommendation and report already filed

b. If no agency has guardianship and relative other than stepparent is petitioner, by

- DCF

§ 48.57(1)(e), (hm)

- Cty Dept authorized or licensed to accept guardianship and place children

§ 48.60

- Child welfare agency licensed to accept guardianship and place children

§ 48.88(2)(c)

c. If no agency has guardianship and stepparent is petitioner, by

- DCF in Cty with population of 750,000 or more

§ 48.56

- Cty agency

- Except, with consent, Ct may order DCF, in counties that have a population under 750,000, or licensed child welfare agency to investigate

§ 48.88(2)(a)4.

d. If child is citizen of foreign jurisdiction and under guardianship of an individual, by

- Agency that conducted home study required under federal law before entry into US

§ 48.88(2)(ag)

e. If Indian child, Ct may request child welfare dept of Indian child's tribe to conduct the investigation

§ 48.88(2)(b)

3) Timing of investigation

a. Report must be filed at least 10 days before hearing

b. Time may be reduced for good cause shown by petitioner

4) Report becomes part of record of proceedings

D. Recommendations required

1) Recommendation by guardian

§ 48.841

a. Written recommendation required in all cases in which there is a guardian

§ 48.85(1)

b. Must be filed with Ct at least 10 days before hearing

§ 48.871

c. Must file satisfactory evidence of authority to file recommendation

- In case of judicial TPR, certified copy of TPR and order appointing guardian
- In other cases of guardian appointed by Ct, certified copy of order appointing guardian
- If authority based on instrument other than Ct order, valid under laws of another state, that instrument

§ 48.85(2)

d. Guardian's recommendation presumed to be in best interests of child

- Unless fair preponderance of credible evidence is to contrary

- If guardian's recommendation is opposed to adoption, Ct MUST take testimony on whether proposed adoption is in best interest of child

§ 48.841(2)

- If guardian neglects or refuses to file timely recommendation, Ct may proceed as though guardian's recommendation favorable

2) Recommendation by DCF

§ 48.89(1)

a. Required for adoption of child not under gdnship of Cty Dept under § 48.57(1)(e) or (hm) or a child welfare agency under § 48.61(5)

§ 48.89(2)

b. Recommendation to be filed with Ct at least 10 days before hearing unless time extended by Ct

c. Recommendation made part of record of proceedings

§ 48.89(3), § 48.841

3) DCF recommendation not required if

a. One of following required to file as guardian

- DCF
- Licensed child welfare agency
- Cty Dept authorized or licensed to accept guardianship, or

b. One of petitioners is a relative of the child

7. Hearing on Adoption Petition

A. Whenever Indian child, parent, or custodian involved in adoption proceedings

§ 48.028

1) ICWA must be reviewed and complied with as required

§ 48.028(7)(a), (e)

2) ICWA specifies preference, in absence of good cause to contrary or different tribal preference, for placement with

§ 48.028(7)(a), (e)

a. Member of child's extended family

b. Other members of child's tribe

c. Other Indian families

d. See § 48.028(7)(e)/§ 938.028(6)(d) for good cause consideration

§ 48.91(1)

B. Hearing may be in chambers unless interested person objects

C. Petitioner and child age 14 or older must attend

1) Child may be excused by Ct

LP v BG
(Adoption of JCG)
177 Wis. 2d 424
(CA 1993)

D. Persons who do not have right under § 48.90(1) and (2) to petition for adoption do not have standing to object to the child's adoption by another

§ 48.91(2), § 767.805(1)

E. Ct must determine whether paternity conclusively determined from genetic test results under § 767.804, acknowledged, or adjudicated

1) Must be done before any action on adoption petition

§ 48.91(2)
§ 48.423

2) If paternity not conclusively determined from genetic test results, acknowledged, or adjudicated, whether or not declaration of paternal interest filed, Ct must attempt to determine paternity and rights of any person who might be child's father

§ 48.40–.435

F. TPR required before adoption

§ 48.839(3)(b)

1) Except as statutorily provided for adoption of foreign children

§ 48.831

2) Not required when child has no living parent

§ 48.91(3)
RMC Form JC-1647

G. Findings required by Ct at adoption hearing

1) Necessary reports, consents, and recommendations filed

§ 48.975(4)
Comment

a. Ct may wish to inquire whether agreement for adoption assistance (financial) has been reached with the state for special needs adoption. Agreement must be reached before adoption is final (absent extenuating circumstances)

2) Adoption in best interests of child

3) Ct may change child's name in order granting adoption

§ 48.95

H. If adoption not granted or petition withdrawn

1) Child remains in legal custody of DCF or agency if parental rights terminated and guardian is

a. DCF

§ 48.57(1)(e), (hm)

b. Cty Dept authorized or licensed to accept guardianship and place children

§ 48.60

c. Child welfare agency licensed to accept guardianship and place children

2) Or, in situations other than immediately above, case transferred to Juv Ct for appropriate action

8. Adoption Petition Granted

§ 48.92

A. Effect of adoption

1) After order of adoption entered, relation of parent and child and all rights, duties, and other legal consequences of relation of child and birth parent exist between adopted child and adoptive parents

§ 48.92(2)

2) Legal relationship between adopted child and birth parent ceases unless birth parent is spouse of adoptive parent

§ 48.028(9)

a. Exceptions to this under ICWA

§ 48.028(7)

- First preference for adoptive placement of Indian child is with extended family members. Since adoption occurs, by definition, post-TPR, this implies that child retains some relationship with biological family

§ 48.028(8)

- Whenever an adoption decree is set aside or parental rights of adoptive parents have been terminated, an Indian child's former parents or Indian custodian may petition for return of custody. Ct must grant such a petition for the return of an Indian child, unless shown that return is not in child's best interests

Committee Note

It is unclear whether Ct or child welfare authorities must provide notice to the former Indian parent, Indian custodian, or Indian child's tribe that adoption decree has been set aside or TPR has occurred

§ 854.20
§ 854.21

3) Rights of inheritance by, from, and through adopted child are governed by probate law

Martinez v Pavlick
(In re Estate of Arndt)
No. 2008AP2789
(Wis CA July 14, 2009)
(citable unpublished
opinion)

a. If TPR occurs but child is not adopted, inheritance rights of birth family survive

Soergel v Raufman
154 Wis. 2d 564 (1990)

4) Precludes grandparents of parent whose parental rights have been terminated from seeking right to visitation

§ 48.9795(12)
HF v TF (In re CGF)
168 Wis. 2d 62 (1992)

5) Visitation by grandparent whose relationship is through deceased parent is not precluded

§ 48.92(2), § 48.925

6) Ct may order visitation after TPR to relatives who have maintained relationship similar to a parent-child relationship with the child to be adopted. BUT visitation may not be granted, and if already granted shall be terminated, for relative who has maintained a relationship similar to a parent-child relationship with a child if relative is convicted of 1st- or 2nd-degree intentional homicide of a parent of the child, if conviction is not reversed, set aside, or vacated

§ 48.925(1m)(b)

a. Unless Ct finds by clear and convincing evidence, after considering the wishes of the child, that visitation would be in the best interest of the child

Sporleder v Hermes
(In Int of ZJH)
162 Wis. 2d 1002 (1991)

7) Adoption by single parent creates intact family unit of parent and child

B. Records

§ 48.93(1d)

1) All records and papers pertaining to adoption must be kept in separate, locked file

§ 48.93(2)

a. All correspondence and papers relating to investigation but not part of Ct record must be transferred to DCF and placed in closed file

- Except those in custody of agencies authorized to place for adoption

§ 48.93(1r), § 48.432
§ 48.433, § 48.434

2) Disclosure permitted by DCF in compliance with TPR requirement regarding access to medical and genetic information, and non-identifying social history information of birth parents, and release by agency to birth parent or adoptive parent when authorization granted and by court order upon good cause

§ 48.93(1r)

3) Any agency that placed child for adoption may release medical and genetic information about child or birth parents and non-identifying social history information about child's birth family on file to

a. Child age 18 or older

b. Adoptive parent of child

c. Agency must delete names and addresses of birth parents and any provider of health care to child or birth parents

§ 48.93(1g)

4) At time Ct enters order of adoption, Ct to provide adoptive parents with child's medical and genetic record and any information provided to Ct under § 48.422(9) or § 48.425(2) on birth parents after deleting names and addresses of birth parents and identity of health-care provider

§ 48.94

C. New birth record issued

1) Copy of adoption order to be sent by Clerk of Ct to Wis bureau of vital records for new birth record

2) No new birth record to be ordered if

a. Adoptive parents request it not be changed

b. Adopting parent and spouse who is birth parent of child request it not be changed

§ 808.04(1)

D. Appeal of adoption order or judgment or withdrawal of consent

1) Must be initiated within 45 days after date of entry of final judgment or order if notice of entry given within 21 days

2) Must be initiated with 90 days if notice of entry not given

§ 48.028(5)(c)

3) Under ICWA

a. Up to two years after final decree of adoption, parent may withdraw consent on ground that consent obtained through fraud or duress and may petition Ct to vacate decree

§ 48.915

4) Appeal from judgment granting or denying an adoption shall be given preference

§ 48.97

E. Adoption orders of other jurisdictions

1) Full faith and credit to be given adoption orders from other states or nations

a. Rights, duties, and legal consequences of adoption same as if adoption in Wis

b. If child was adopted in another country, then adoptive parent(s) must submit letter to Ct to request registration of foreign adoption order within one year of admission to US

§ 48.839

9. Adoption of Children Who Are Not U.S. Citizens and Not Under Agency Guardianship

A. Bond required

§ 48.839(1)(a)

1) Bond must be filed by Wis resident appointed by Ct of foreign jurisdiction as guardian of child who is citizen of that jurisdiction, who is bringing the child to Wis for purpose of adoption

2) $1,000 noncancellable bond must be filed with DCF in favor of State of Wis

3) Bond must be furnished by surety company licensed to do business in Wis

4) Bond must be filed before child is brought into Wis for purpose of adoption

5) Condition of bond must be that child will not become dependent on public funds for primary support before adoption

§ 48.839(1)(f)

6) Bond may be waived by DCF

B. Effect of filing bond

§ 48.839(1)(b)

1) By filing bond, child's guardian and surety submit to jurisdiction of Ct in Cty where guardian resides and appoint Clerk of Ct as agent for service of papers affecting bond liability

2) Liability on bond may be enforced without commencing independent action

§ 48.839(1)(d)
§ 49.32(1)(b)
§ 49.345

3) If custody of child ultimately transferred to Cty or child welfare agency before child adopted, guardian and surety billed by DCF for costs of care and maintenance until adoption made or child becomes age 18

4) Guardian and surety also liable for costs of enforcing bond

C. If bond condition violated

§ 48.839(1)(c)

1) Ct must order guardian and surety to show cause why judgment on bond should not be entered

2) DCF to file affidavit with Ct showing grounds for believing conditions of bond violated

3) Ct must enter judgment on bond for DCF against guardian and surety if

a. Guardian and surety fail to appear, or

b. Ct concludes after hearing that conditions of bond violated

D. Evidence of availability for adoption required

§ 48.839(2)(a)

1) Certified copy of judgment or order of Ct of foreign jurisdiction must be filed by resident of Wis appointed by Ct of foreign jurisdiction as guardian intending to bring child to Wis for adoption

2) If instrument has effect of freeing child for adoption in foreign jurisdiction but is not judgment or order of Ct, guardian must file copy of law under which instrument issued

a. English language translation must be filed

b. DCF must return original documents to guardian and retain copies

c. DCF may waive filing requirement

§ 48.839(2)(b)

3) Guardian must complete preadoption preparation under § 48.84(1)

§ 48.839(3)

E. Petition for adoption and/or TPR required

§ 48.839(3)(a)

1) Petitions must be filed by child's guardian

2) Petition for adoption or TPR, or both, must be filed within 60 days after arrival of child in Wis

a. If only petition for TPR filed, petition for adoption must be filed within 60 days after TPR order

b. Petitioner must file with Ct documents filed with DCF concerning evidence of availability for adoption (See **Sec. D.** immediately above)

§ 48.839(3)(c)

c. Petitioner must file copy of petition for adoption with DCF at time petition filed with Ct

- If evidence of availability is other than Ct judgment or order, DCF may make recommendation to Ct as to whether instrument has effect of freeing child for adoption

§ 48.839(3)(d)

3) If evidence of availability is other than Ct judgment or order, Ct must determine whether document has effect of freeing child for adoption

a. Ct must presume document has that effect unless substantial irregularities exist on face of document or DCF shows good cause for believing document does not have that effect

b. If Ct determines that document does not have effect of freeing child for adoption, Ct must order petitioner to file petition for TPR within 10 days

§ 48.839(3)(e)

4) If document is Ct judgment or order, that order is legally sufficient evidence that child free for adoption

§ 48.839(4)

F. Ct's responsibilities if petition for adoption withdrawn, denied, or not filed

1) Transfer guardianship to

a. DCF

§ 48.57(1)(e), (hm)

b. Cty Dept authorized or licensed to accept guardianship and place children

§ 48.60

c. Child welfare agency licensed to accept guardianship and place children

§ 48.839(4)

2) Order agency guardian to file TPR petition within 10 days

3) Transfer legal custody of child to a Cty Dept or licensed child welfare agency (or to DCF in Cty with a population of 750,000 or more)

4) Order guardian who filed bond to show cause why bond should not be forfeited

5) May order physical custody of child to remain with suitable individual with whom child living

§ 48.839(5)

G. Any licensed child welfare agency that negotiates or arranges placement of foreign child for adoption shall provide services to child and proposed adoptive parents until adoption final

10. Adoption of Children Who Are U.S. Citizens and Not Under Agency Guardianship

§ 48.98(4)

A. ICPC does not apply

§ 48.98(1)

B. Applies to any person bringing child into Wis for purpose of placement in foster care or for adoption

1) Must have certificate from DCF that home suitable for child

§ 48.98(2)(a)

C. Bond required

1) Bond must be filed by person who brings child into Wis for purpose of placing child in foster home

2) $1,000 noncancellable bond to be filed with DCF in favor of State of Wis

3) Bond must be furnished by surety company licensed to do business in Wis

4) Bond must be filed before child brought into Wis for purpose of adoption

5) Condition of bond must be that child will not become dependent on public funds for primary support before adopted or reaches age 18

§ 48.98(2)(e)

6) Bond may be waived by DCF

D. Effect of filing bond

§ 48.98(2)(b)

1) By filing bond, child's guardian and surety submit to jurisdiction of Ct in Cty where person resides and appoint Clerk of Ct as agent for service of papers affecting bond liability

2) Liability on bond may be enforced without commencing independent action

§ 48.98(2)(d)
§ 49.32(1)(b)
§ 49.345

3) Person who filed bond and surety billed by DCF for costs of care and maintenance until child adopted or becomes age 18

4) Guardian and surety liable for costs of enforcing bond

E. If bond condition violated

§ 48.98(2)(c)

1) Ct must order person who filed bond and surety to show cause why judgment on bond should not be entered

2) DCF to file affidavit with Ct showing grounds for believing conditions of bond violated

3) Ct must enter judgment on bond for DCF against person filing it and surety if

a. Neither person who filed bond nor surety appears at hearing on order to show cause, or

b. Ct concludes after hearing that conditions of bond violated

§ 48.98(3)

4) Person bringing or sending child into Wis shall report to DCF at least once each year and at any other time required by DCF, concerning location and well-being of child until child is 18 or adopted

11. Children Who Are U.S. Citizens and Under Agency Guardianship

§ 48.988–.989

A. ICPC applies

§ 48.988(2)

B. Definitions

1) Receiving state—state to which child is sent, brought, or caused to be sent or brought

2) Sending agency—a party state, its officer or employee; a subdivision of a party state, its officer or employee; Ct of a party state; person, corporation, association, charitable agency or other entity that sends, brings, or causes to be sent or brought any child to another party state

§ 48.988(1)

C. Purpose and policy

1) To ensure that each child requiring placement receives maximum opportunity to be placed in suitable environment and with persons having appropriate qualifications and facilities to provide necessary and desirable degree and type of care

2) To ensure that appropriate authorities in state where child to be placed have full opportunity to ascertain circumstances of proposed placement, thereby promoting full compliance with applicable requirements for protection of child

3) To ensure that proper authorities of state from which placement is made obtain most complete information on basis of which to evaluate projected placement before made

§ 48.988(3)

D. Conditions for placement

1) Sending agency must comply with every ICPC requirement and all receiving state laws before child placed in receiving state in foster care or as preliminary to adoption

Comment

a. TPR hearing held in sending state must comply with TPR law in receiving state

2) Sending agency must give public authority (Interstate Compact Administrator) in receiving state written notice of intention to send, bring, or place child in receiving state before doing so. Notice must contain

a. Name, date, and place of birth of child

b. Identity and address of parent or legal guardian

c. Name and address of proposed recipient of child

d. Full statement of reasons for proposed action and authority

3) Before child sent or brought, receiving state must notify sending agency, in writing, that proposed placement does not appear contrary to interests of child

§ 48.988(5)

E. Sending agency retains jurisdiction over child as if child had remained in sending state

1) Jurisdiction until child

a. Is adopted

b. Reaches majority

c. Becomes self-supporting

d. Is discharged with concurrence of receiving state

2) Jurisdiction includes power to effect or cause return of child or child's transfer to another location and custody

F. Sending agency has financial responsibility for support and maintenance of child during period of placement

G. Private charitable agency in receiving state may act as agent for private charitable agency of sending state

§ 48.988(8)

H. ICPC does not apply to

1) Sending or bringing child into receiving state by parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving child with such relative or non-agency guardian in receiving state, if the person who sends or brings the child (or causes the child to be sent or brought) into the receiving state is a person whose full legal right to plan for the child was previously established and has not been voluntarily terminated or diminished/ severed by Ct

2) See above for procedure when agency NOT guardian

JV 15: WAIVER OF PARENTAL CONSENT FOR ABORTION

§ 48.375(4)

1. Emancipated Minor

A. An emancipated minor may obtain an abortion just as any adult woman may

§ 48.375(2)(e)

B. "Emancipated minor" is

1) A minor who is or has been married

2) One who has previously given birth

3) A minor who has been freed from the care, custody, and control of her parents with little likelihood of returning before marriage or reaching the age of majority

§ 48.375(4)

2. Unemancipated Minor

A. Unemancipated minor may obtain abortion with written consent of minor and

1) One of her parents, or

2) Her guardian or legal custodian, or

§ 48.375(2)(b)

3) Adult family member, including grandparent, aunt, uncle, sister, or brother, at least age 25 or

4) A foster parent, if parent has signed consent for DCF, Cty Dept, or foster parent to consent to medical treatment

§ 48.375(4)(b)

B. Physician may perform abortion without consent or Ct order under limited conditions such as

1) Medical emergency

2) Pregnancy as result of sexual assault or incest

3) If psychologist or psychiatrist certifies minor likely to commit suicide

4) Minor alleges abuse by legal custodian, guardian, custodial parent, adult family member, or foster parent

§ 48.375(4)(a)2.

C. Unemancipated minor may obtain abortion with Ct order waiving the requirement of written consent

3. Procedure for Waiver

§ 48.375(6)

A. Who may file petition

1) Pregnant minor seeking abortion in this state

§ 48.375(3)

a. Even if nonresident of Wis

§ 48.16

b. Any Circuit Ct within Wis has jurisdiction over a petition to waive parental consent

§ 48.375(6)

2) Any member of clergy on minor's behalf

§ 48.375(2)(em)
§ 765.002(1)

a. "Member of clergy" is "spiritual adviser of any religion whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend, or any other official designation"

§ 48.257

B. Petition shall contain

1) Name "Jane Doe" and minor's date of birth

2) Statement that minor is pregnant and estimated gestational age of fetus

3) Statement that minor is seeking an abortion

4) Name and address of person or clinic who will perform the abortion, if known

5) Request for waiver of parental consent requirement

6) Statement and facts in support that minor is mature and well-informed enough to make her own decision

7) Statement that if Ct finds minor is not mature and well-informed enough to make own decision, Ct should find that having an abortion is in minor's best interests and facts sufficient to establish that an abortion is in the minor's best interest

8) Statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and carrying the pregnancy to term

9) Statement where notices are to be sent

10) Petition to be signed "Jane Doe"

§ 48.257(6)

C. No filing fee may be charged

§ 48.23(1m)(cm)

D. Minor who is subject to jurisdiction of Circuit Ct under § 48.16 and who is required to appear in Ct shall be represented by counsel

§ 48.23(4)

1) If minor is referred to SPD, counsel shall be appointed within 24 hours after referral without determination of indigency

§ 48.375(7)(e)

E. Identity of minor shall be kept confidential

1) Except for use in § 895.037(2) forfeiture action, § 895.037(3) civil action, or § 48.981 child abuse or neglect investigation

§ 48.375(7)(a)

F. Ct to set initial appearance on same calendar date petition is filed or, if impossible, on next calendar day

1) Holidays and weekends not excluded

2) No statutory basis for extending time period

§ 48.273(4)(b), (c)

G. Notice of hearing to minor

1) Notice must be given immediately unless minor waives immediate notice

2) If immediate notice waived, must be given at least 24 hours before hearing

3) Personal service required except

   a. If minor not represented, notice to be in manner she has designated on petition

   b. When counsel appointed, notice served on counsel

4) Minor may acknowledge service by signing “Jane Doe”

5) Costs of service paid by county

§ 48.375(7)(a)

H. Initial appearance

1) Must be in chambers

2) Minor or clergyperson filing for her must be present

§ 48.375(7)(f)

3) The following may NOT attend, intervene, or give evidence

a. Parents, guardian or legal custodian, foster parent, adult family member 25 years or older

§ 48.375(7)(a)1.

4) Ct shall appoint counsel if minor not represented

a. SPD must appoint counsel within 24 hours after initial appearance regardless of indigency

§ 48.375(7)(a)3.

5) Ct to set time, date, and place for hearing on petition

a. Hearing must be held such that the hearing is held and a decision and order is issued within 3 calendar days after the initial appearance

§ 48.375(7)(d)1.

- Minor and her counsel or clergyperson who filed petition may consent to extension of time period

§ 48.375(7)(a)4.

6) Ct to give notice of hearing on petition to: minor, minor’s counsel, clergyperson who filed petition, GAL

a. Service as in **Sec. G.** above

§ 48.375(7)(am)

7) Appointment of GAL for minor discretionary with Ct

a. No authority to appoint GAL for fetus

Recommendation

I. If minor appears with counsel at initial appearance, hearing on petition should be held immediately and need to return for second hearing dispensed with

§ 48.375(7)(b)

4. Hearing on Petition

A. Confidential hearing held in chambers unless minor demands public fact-finding hearing

B. Statute requires "evidence"

§ 48.375(7)(bm)

1) If clergyperson filed petition, Ct can base decision solely on affidavit that clergyperson filed with the petition

2) Affidavit must state that clergy has met personally with minor and explored choices including carrying pregnancy to term and keeping infant or placing infant for adoption or having abortion and has discussed with minor the possibility of involving parent, guardian or legal custodian, or 25-year-old family member, or foster parent in decision

Recommendation

C. Require attendance by minor if she filed petition, clergy if clergy filed petition, counsel and/or GAL for minor

§ 48.375(7)(f)

D. Barred from attendance

1) Parents, guardian or legal custodian, foster parent, adult family member 25 years or older

§ 48.375(7)(b)

E. Ct must hear evidence concerning

1) Emotional development, maturity, intellect, and understanding of the minor

2) Understanding of the minor about nature of, possible consequences of, and alternatives to intended abortion procedure

3) Anything else Ct finds useful

4) Report of GAL, if any appointed

F. Ct may conduct interview with minor in chambers

5. Determination by Court

§ 47.375(7)(d)
RMC Form JC-1623

A. Decision must be issued within 24 hours after hearing and no later than 3 calendar days after initial appearance

1) Minor and her counsel or clergy who filed can give prior consent to an extension of time

§ 48.375(7)(c)

B. Ct must grant petition if it finds either

1) Minor is mature and well-informed enough to make abortion decision on her own, or

2) The abortion is in the minor's best interests

C. No statutory burden of proof indicated

§ 48.375(7)(d)

D. Ct must file findings of fact, conclusions of law, and final order with clerk within 24 hours after making the determination and order

§ 48.375(7)(d)1., 2.

E. If petition granted

1) Minor must be notified by personal service of certified copy of Ct order on her counsel or the clergy who filed the petition

2) Counsel or clergy who filed petition must hand-deliver certified copy of Ct order to person or agent of organization that intends to perform the abortion for placement in minor's medical record

§ 48.375(7)(d)1.

F. If petition denied

1) Minor must be notified by personal service on her counsel or clergy who filed petition of copy of Ct order AND

2) Minor must be notified of her right to appeal under § 809.105

G. Order is effective immediately

§ 48.375(7)(d)1m.

H. If Judge does not act within applicable time periods for making and filing decision, petitioner may select temporary reserve Judge who must then be assigned by Chief Judge

1) Reserve Judge must make and file decision within 2 calendar days after appointment

a. Minor and counsel or clergy can consent to extension of time

JV 16: JUVENILE GUARDIANSHIPS

NOTE: See also the Record Management Committee's (RMC's) "JN" forms on guardianships of the person for children under § 48.9795.

1. Jurisdiction of Ch 48 Court

§ 48.14(2), § 48.02(2m)

A. Ct exercising jurisdiction under Ch 48 has exclusive jurisdiction over appointment and removal of guardian of person in following cases, except as provided in § 48.028(3) (jurisdiction over Indian child custody proceeding)

§ 48.14(2)(a)

1) For a minor, when parental rights terminated, or

§ 48.14(12)

2) Proceedings under § 48.028(8) for return of custody of Indian child to former parent/Indian custodian or following a vacation or setting aside of an order granting an adoption of Indian child or following an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child

§ 48.14(2)(b)

3) Appointment and removal of guardian of person for a child under the following statutes and chapters

a. § 48.13—CHIPS because without parent or guardian

b. § 48.427—TPR disposition (See **JV 13, Sec. 10**)

c. § 48.43—TPR Ct order, Guardianship for adoptive placement (See **JV 13, Sec. 10**)

d. § 48.831—Appointment of guardian for child without living parent for adoptability finding

e. § 48.832—Transfer of guardianship upon revocation of guardian's license

f. § 48.839(4)(a)—Adoption of foreign children and transfer of guardianship to DCF, Cty Dept under § 48.57(1)(e) or (hm), or child welfare agency under § 48.61(5)

g. § 48.977—Appointment of guardian for certain children found CHIPS

h. § 48.978—Appointment of standby guardian

i. § 48.9795—Guardianship of the person for a child

B. For procedure in guardianships of estate of a minor, see Probate, Guardianship, & Mental Health Benchbook, GA 4

§ 822.02(4)
PC v CC (In Int of AEH)
161 Wis. 2d 277 (1991)

C. Guardianship proceedings are custody determinations governed by UCCJEA (See JV 1, Children's Code, Sec. 7)

2. Chapter
48 Guardianship of Person for a Child

§ 48.9795(1)

A. Definition

§ 48.9795(1)(a)1.

1) Interested person means

a. For purposes of a petition for guardianship of a child

- Child if 12 or older, and child's GAL and counsel, if any
- Child's parents, guardian, legal custodian, and physical custodian
- If child is Indian child, Indian child's Indian custodian and Indian tribe
- If no living parent, any individual nominated to act as fiduciary for child in a will or written instrument executed by parent
- Person who has filed declaration of paternal interest under § 48.025
- Person alleged to Ct to be child's father
- Person, based on mother's statements or other information presented to Ct, who may be child's father
- Any individual nominated as guardian or successor guardian
- If child is receiving or needs public services or benefits, Cty Dept (or DCF in Milwaukee Cty) providing services or benefits through DA, Corp Counsel, or other officials under § 48.09
- Any other person Ct may require

b. For the purposes of postdispositional proceedings in the guardianship

- Child, if 12 or older, and child's GAL and counsel, if any
- Child's parent or guardian
- If child is an Indian child, the Indian child's tribe
- Cty of venue through DA, Corp Counsel, or official under § 48.09 if Cty has interest in guardianship

- Any other person the Ct may require

§ 48.9795(1)(b)

2) Party means the person petitioning for appointment of guardian for a child or any interested person other than person who is alleged to be the child's father or who may, based on mother's statements or other information presented to Ct, be the child's father

B. Power to Appoint

§ 48.9795(2)b)

1) Circuit Ct may appoint guardian of person for a child

§ 48.9795(2)(a)

2) Venue is Cty of residence of child, Cty in which child is physically present, or if a nonresident, Ct in which the child is proposed to reside

Ct may transfer case to Cty in which a dispositional order has been issued under Ch 48

§ 48.9795(2)(b)1.

3) If Ct has jurisdiction under Ch 48 for appointment of a guardian of the person for a child, or continuing jurisdiction over such guardianship, and a Probate Ct has jurisdiction or continuing jurisdiction over a guardianship of the estate of the child, then the Ch 48 Ct may order proceedings consolidated under Ch 48

§ 48.9795(2)(b)2.

4) If child is subject of proceedings under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938, any subsequent petition under § 48.9795 shall be heard by Ct authorized to exercise jurisdiction over the existing matter

a. If a matter under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938 is pending, the (full, limited, temporary) guardianship proceeding shall be stayed until the other Juv Ct matter is resolved

b. Ct may appoint emergency guardian under § 48.9795(6), while a matter under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938 is pending, if Ct finds it is in best interest of child to require immediate appointment of guardian

§ 48.9795(2)(b)3.

NOTE: A petition filed under § 48.9795 cannot seek to change an order under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938.

§ 48.9795(2)(b)4.

5) Ct can appoint co-guardians under § 48.9795, subject to any conditions Ct imposes. Unless ordered otherwise, all co-guardians must concur in any decision concerning the child or the decision is void

§ 48.9795(4)

C. Who may file

§ 48.9795(4)(a)1.

1) May be filed by any person

2) If matter is pending under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938, a petition may be filed by any party to the pending matter, or person approved by the Ct, if petition is consistent with the goal(s) of the permanency plan and does not seek to change the requirements of any preexisting order issued under § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938

D. Initial timing considerations

§ 48.9795(4)(e)

Petition must be heard within 45 days after filing, except

§ 48.9795(6)(b)4.

On an emergency guardianship petition, the petition will be heard as soon as possible after the filing of the petition

§ 48.9795(4)(b)

E. Contents—petition shall state:

§ 48.9795(4)(b)1.

1) Name, date of birth, address of the child

§ 48.9795(4)(b)2.

2) Names and addresses of the petitioner; child's parents; current guardian and legal custodian, if any; proposed guardian; any proposed successor guardians; and all interested persons

§ 48.9795(4)(c)1.

Failure of petitioner to provide notice to all interested persons deprives Ct of jurisdiction unless receipt of notice is waived or good cause shown

§ 48.9795(4)(b)3.

3) Whether the petitioner is requesting a full, limited, temporary, or emergency guardianship

§ 48.9795(4)(b)4.

a. Full guardianship: include facts and circumstances establishing that the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or other compelling factors and circumstances demonstrating that a full guardianship is necessary

§ 48.9795(4)(b)5.

b. Limited guardianship: include facts and circumstances establishing that the child's parents need assistance in providing for the care, custody, and control of the child and a statement of the specific duties and authority under § 48.9795(2)(d) sought by the petitioner for the proposed guardian and the specific parental rights and duties that

the petitioner seeks to have transferred

§ 48.9795(4)(b)6.

c. Temporary guardianship: include facts and circumstances establishing that the child's particular situation, including the inability of the child's parents to provide for the care, custody, and control of the child for a temporary period of time requires the appointment of a temporary guardian; the reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian. *See also* Sec. N., *infra*

§ 48.9795(4)(b)7.

d. Emergency guardianship: include the facts and circumstances establishing that the welfare of the child requires the immediate appointment of an emergency guardian

§ 48.9795(4)(b)8.

4) Facts and circumstances establishing that the proposed guardian is fit, willing, and able to serve as the child's guardian

§ 48.9795(4)(b)9.

5) Information required under § 822.29(1)

§ 822.29(1)

a. UCCJEA requires following sworn information in petition or affidavit:

- Child's present address and addresses for last 5 years
- Names and present addresses of people child lived with during last 5 years
- Whether party has participated in any other litigation concerning custody of this child
- Whether party knows of any pending proceedings about this child that could affect this guardianship proceeding
- Whether party knows of a person who has physical custody of child or claims to have custody or visitation rights, but who is not party to this litigation

6) For Indian children

§ 48.9795(4)(b)10.

a. Whether the child may be subject to § 48.028 or the federal Indian Child Welfare Act (ICWA), 25 USC §§ 1901–1963, and, if the child may be subject to § 48.028 or the federal ICWA, the names and addresses of the child's Indian custodian, in any, and Indian tribe, if known

§ 48.9795(4)(b)11.

b. If the petitioner knows or has reason to know that the child is an Indian child, reliable and credible information showing that continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child under § 48.028(4)(d)1. and that active efforts under § 48.028(4)(d)2. have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful and, if the proposed guardianship would change the placement of the child from the home of his or her parent or Indian custodian to a placement outside that home, a statement as to whether the new placement is in compliance with the order of placement preference under § 48.028(7)(b) or, if applicable, § 48.028(7)(c) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in § 48.028(7)(e), for departing from that order

§ 48.9795(4)(b)12.

7) Whether the petitioner is aware of any guardianship or other related proceeding involving the child that is pending in another Ct and, if so, the details of the guardianship, termination of parental rights, or related proceeding

§ 48.9795(4)(b)13.

8) Whether there is any matter pending or the child is subject to a Ct order under § 48.13, 48.133, or 48.14 or Ch 938

§ 48.9795(2)(c)

F. Nomination by Parent or Child

1) Parent may nominate guardian and successor guardian for any of that parent's children who are in need of guardianship, including a nomination by will. Subject to the rights of a surviving parent, Ct shall appoint person nominated as guardian or successor guardian, unless Ct finds that appointment of the person nominated is not in child's best interests

2) Child who has attained 12 years of age may nominate the child's own guardian

a. If child is outside Wis or if other good reason exists, Ct may dispense with child's right of nomination

b. If neither parent of a child who has attained 12 years of age is fit, willing, and able to carry out the duties of a guardian, Ct may appoint the child's nominee

3) In determining who is appointed as guardian, the Ct shall consider

a. Parents' and child's nominations and their opinions as to what is in the child's best interests

b. However, the best interests of the child as determined by the Ct shall control in making the determination when those nominations and opinions are in conflict with those best interests

G. Notice

§ 48.9795(4)(c)1.

1) Petitioner shall serve notice to all interested parties

a. See § 48.9795(1)(a)1. for definition of interested parties

§ 48.9795(6)(b)2.

b. In an emergency guardianship petition, the petitioner shall give notice of the petition and of the time and place of the hearing under § 48.9795(6)(b)4. to the child, if 12 years of age or over, the child's GAL, and the child's counsel, if any; the child's parents, guardian, and legal custodian; and the person nominated as emergency guardian

§ 48.9795(4)(c)

2) Notice to be provided at least 7 days before hearing, except in emergency guardianship proceedings

a. For Indian child:

§ 48.9795(4)(c)3.

- If petitioner knows or has reason to know that child is an Indian child, notice to Indian child's parent, Indian custodian, and Indian tribe shall be provided in the manner specified in § 48.028(4)(a). No initial hearing or fact-finding or dispositional hearing can be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and Indian tribe, or, if the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. Secretary of the Interior

- On request of the Indian child's parent, Indian custodian, or Indian tribe, the Ct shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing

§ 48.9795(6)(b)2.

b. In an emergency guardianship proceeding, the notice and petition shall be served as soon after the filing of the petition as possible and by the most practical means possible, including personal service or service by email or telephone, and shall include notice of the right to petition for reconsideration or modification of the emergency guardianship. If the petitioner serves notice of the hearing after the hearing is conducted and the Ct has entered an order, the petitioner shall include the Ct's order with the notice of the hearing

§ 48.9795)(4)(c)2.

c. A notice shall be in writing, a copy of the petition and any other required document shall be attached to the notice

See § 48.9795(4)(c)3.

d. Notice delivered in person or by certified mail, except as provided in Indian child cases or emergency guardianships

e. Service by email or fax may be valid under § 801.14(2)

§ 48.9795(4)(d)

3) The proposed guardian shall submit, at least 96 hours before the initial hearing, a sworn and notarized statement as to:

a. The number of persons for whom the proposed guardian is responsible as a parent, guardian or legal custodian;

b. Proposed guardian's income, assets, debts, and living expenses;

c. Whether the proposed guardian is currently charged with, or has been convicted of a crime;

d. Whether the proposed guardian has been determined under § 48.981(3)(c) to have abused or neglected a child

e. If the proposed guardian is currently charged with or has been convicted of a crime, or has been determined to have abused or neglected a child under § 48.981, the proposed guardian must include in the sworn statement a description of the circumstances surrounding the charge, conviction, or determination

§ 48.9795(4)(c)1.

4) Failure of petitioner to provide notice to all interested persons deprives Ct of jurisdiction, unless notice is specifically waived by the interested person or by the Ct for good cause

H. Appointment of GAL or counsel

§ 48.9795(3)

1) Ct must appoint GAL for the child when the petition is filed for the appointment, modification, or termination of guardianship

§ 48.23(3)

2) Ct may appoint counsel for the child, in its discretion

§ 48.23(2g)

3) Indian child's parents or custodian has right to appointment of counsel

§ 48.9795(4)(e)

I. Initial Hearing

1) Initial hearing will occur within 45 days after the filing of a guardianship petition, except for emergency guardianships. (*See* **Sec. 2.O.**, Emergency Guardianships)

2) Ct will initially determine whether any party is contesting the petition

3) If petition is not contested, Ct shall immediately proceed to fact-finding and disposition (*See* **Sec. 2.J.**)

4) If petition is contested and all parties agree, the matter will proceed immediately to fact-finding and disposition

5) If any party does not consent or a request for a adjournment is granted, the Ct shall set a date for fact-finding and disposition that allows a reasonable time for preparation, not to exceed 30 days

6) Proposed guardian and any proposed successor guardian shall be physically present at all hearings, unless

a. Ct excuses attendance, or

b. Ct finds good cause to allow proposed guardian or proposed successor guardian to appear by telephone

§ 48.9795(4)(e)2.

7) Child is not required to attend any hearings; however

If child has proposed guardian, child shall provide to GAL sufficient information for GAL to advise Ct on whether nomination is in child's best interests

§ 48.9795(4)(e)3.

8) If man who has been given notice appears at initial hearing, alleges that he is child's father, and states that he wishes to establish the paternity of the child, § 48.299(6) applies

Ct may order temporary guardianship pending outcome of paternity proceedings

§ 48.9795(4)(f)

J. Fact-Finding and Dispositional Hearing

1) Any party may present evidence, including expert testimony, and argument related to the allegations in the petition

2) Ct will determine whether petitioner has proven allegations in petition by clear and convincing evidence

See **Sec. 2.E.**, *supra*, for elements of the petition

3) Immediately after fact-finding hearing, Ct will proceed to determine appropriate disposition

§ 48.9795(4)(g)

K. Dispositional Factors

Ct shall consider all of the following in determining the appropriate disposition:

1) Any nominations made under § 48.9795(2)(c)1. or 2. and the opinions of the parents and child as to what is in the best interests of the child, but the best interests of the child as determined by the Ct shall control in making the determination when those nominations and opinions are in conflict with those best interests

2) Whether the proposed guardian would be fit, willing, and able to serve as the guardian of the child

3) If the child is an Indian child, the order of placement preference under § 48.028(7)(b) or, if applicable, § 48.028 (7) (c), unless the Ct finds good cause, as described in § 48.028(7)(e), for departing from that order

4) Whether appointment of the proposed guardian as the child's guardian is in the best interests of the child

§ 48.9795(4)(h)

L. Disposition

At the conclusion of the fact-finding hearing, Ct will enter one of the following dispositions, unless hearing is adjourned because Ct finds the proposed guardian unfit or not in the best interests of the child

1) Disposition dismissing petition, if Ct finds that petitioner has not proved allegations in petition by clear and convincing evidence or if Ct determines that appointment of proposed guardian is not in child's best interests

   Dismissal does not preclude Ct from referring child to intake worker under § 48.24 or from acting as intake worker itself, under § 48.10

2) Disposition ordering the guardianship and issuing letters of guardianship if Ct finds that petitioner has proved allegations in petition by clear and convincing evidence and determines that such an appointment is in child's best interests. Dispositional order under § 48.9795 cannot change placement of child under Ct supervision pursuant to § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938. Disposition shall include all of the following:

   a. Whether appointment is for a full, limited, or temporary guardianship, and, if limited or temporary, the limitations and expiration date of the guardianship

   b. If applicable, the amount of support to be paid by the child's parents

   c. If applicable, and subject to § 48.9795(13), reasonable rules of parental visitation. Subject to Ct order under § 48.9795(4)(b)2., (9), or (13), guardian's decision regarding visitation is presumed to be in child's best interests and, if Ct reviews decision, petitioner has burden of proving by clear and convincing evidence that guardian's decision is not in child's best interests

§ 48.9795(4)(i)

M. Adjournment; proposed guardian unfit or not in best interests

1) Ct may take specific actions in lieu of granting disposition dismissing petition

   a. If Ct finds that petitioner has proved allegations in the petition, but that proposed guardian is not fit, willing, and able to serve as guardian, or

   b. If Ct finds that petitioner has proved all of the allegations in the petition, but that appointment of proposed guardian as child's guardian is not in child's best interests

2) If Ct makes findings in paras. 1)a. or b. above, it may

a. Adjourn the proceedings for not more than 30 days,

b. Request petitioner or other party to nominate a new proposed guardian, and

c. Order GAL to report to Ct concerning whether new proposed guardian is fit, willing, and able to serve as child's guardian

§ 48.9795(5)

N. Temporary Guardianships

1) Procedures are the same as above, including notice. *See* **Sec. 2.G.**, *supra*

2) Temporary guardianship can be granted up to 180 days

Ct may extend for only one additional 180-day period, if good cause is shown

3) Order shall specify the authority of the temporary guardian

a. Guardian's authority will be limited to those acts that are reasonably related to the reasons for temporary guardianship

b. Authority is limited to acts stated in order of appointment

§ 48.9795(5)(b)

4) Petition for appointment of temporary guardian shall be heard in same manner as appointment of a full or limited guardian under § 48.9795

5) Duties and powers of temporary guardian cease upon expiration of time period established in § 48.9795(5)(a) or upon termination as determined by Ct of child's situation that caused temporary guardianship

6) Upon cessation, temporary guardian shall file with Ct any necessary report that Ct requires

§ 48.9795(6)

O. Emergency Guardianships

1) Ct may appoint emergency guardian for child for no more than 60 days

§ 48.9795(6)(b)2.

2) Petitioner shall give notice to child, if 12 years of age or over, child's GAL, and child's counsel, if any; child's parents, guardian, and legal custodian; and person nominated as emergency guardian

§ 48.9795(6)(b)2.

3) Notice and copy of petition shall be served as soon as possible after filing of petition, shall be served by the most practical means possible, including personal service or service by email or telephone, and shall include notice of right to petition for reconsideration or modification of emergency guardianship under § 48.9795(6)(b)5. If petitioner serves notice of hearing after hearing is conducted and Ct has entered an order, petitioner shall include Ct's order with notice of hearing

§ 48.9795(6)(a)

4) Ct's determination and order appointing the emergency guardian shall specify the authority of the emergency guardian and shall be limited to those acts that are reasonably related to reasons for the appointment specified in petition for emergency guardianship. Emergency guardian's authority is limited to performance of those acts stated in order of appointment. Order appointing emergency guardian cannot change the placement of child under Ct's supervision pursuant to § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938

§ 48.9795(6)(b)1.

5) Procedures for appointment: Any person may petition for appointment of guardian, and the petition shall contain the information required in § 48.9795(4)(b) and shall specify the reasons for the appointment of guardian and the powers requested

§ 48.9795(6)(b)3.

6) Ct shall appoint GAL for child as soon as possible after petition filed. Ct shall attempt to appoint before the hearing on the petition, but may appoint afterward if exigent circumstances require immediate appointment of emergency guardian. If Ct dismissed petition for emergency guardianship, then Ct need not appoint GAL unless petition is refiled

a. GAL shall conduct a diligent investigation sufficient to represent the best interests of the child

b. If appointed after the entry of an order, GAL may petition for reconsideration of the emergency guardianship per § 48.9795(6)(b)5.

§ 48.9795(6)(b)4.

7) Ct shall hold a hearing on the emergency petition as soon as possible after filing

a. Ct may, for good cause shown, issue temporary order appointing emergency guardian without hearing, which will remain in effect until hearing can be conducted

b. If appointed before hearing, GAL shall attend hearing in person or by telephone

c. If Ct appoints emergency guardian, any person described in § 48.9795(6)(b)2. may petition for reconsideration or modification of the emergency guardianship

- Ct shall hold rehearing within 30 calendar days after petition filed

§ 48.9795(6)(b)6.

d. If Ct determines that child's welfare does not require immediate appointment of emergency guardian, Ct may dismiss petition

- Dismissal does not preclude Ct from referring the child to intake worker under § 48.24 or from acting as an intake worker itself, under § 48.10

§ 48.9795(6)(c)

e. Emergency guardian is immune from civil liability for his or her acts or omissions in performing the duties of emergency guardianship if he or she performs the duties in good faith, in the best interests of the child, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs

§ 48.9795(6)(d)

f. Duties and powers of the emergency guardian shall cease upon expiration of time period in § 48.9795(6)(a) or termination as determined by Ct of child's situation that caused emergency guardianship

g. Upon cessation, temporary guardian shall file with Ct any necessary report Ct requires

§ 48.9795(2)(d)

P. Duties and Authority of Guardian

§ 48.9795(2)(d)1.

1) "Full guardianship": Subject to § 48.9795(2)(d)2. & 5., guardian appointed under § 48.9795(4)(h)2. has all of the following duties and authority:

a. All of the duties and authority specified in § 48.023

b. Subject to order of Ct of competent jurisdiction, authority to determine reasonable visitation with child

c. Right to change child's residence from Wis to another state

d. Duty to immediately notify Ct that appointed guardian of any change in address of guardian or child and to make an annual report to that Ct on child's condition. Report shall include child's location, child's health condition, and any recommendations regarding the child

§ 48.9795(2)(d)2.

2) "Limited guardianship": Ct may order that duties and authority of guardian appointed under § 48.9795(4)(h)2. be limited

a. Duties and authority of limited guardian shall be as specified by order of appointment under § 48.9795(4)(h)2.

b. Duties and authority of full guardian shall apply to limited guardian to the extent relevant to limited guardian's duties or authority, except as limited by order of appointment

c. Ct may limit guardian's authority with respect to any power to allow the parent to retain such power to make decisions as is within the parent's ability to exercise effectively and may limit guardian's physical custody to allow shared physical custody with parent if shared physical custody is in child's best interests

d. Ct shall set expiration date for limited guardianship order, which may be extended for good cause shown

§ 48.9795(2)(d)3.

3) "Temporary guardianship": If it is demonstrated to the Ct that a child's particular situation, including inability of child's parent to provide for child's care, custody, and control for a temporary period of time, requires appointment of temporary guardian, Ct may appoint temporary guardian as provided under § 48.9795(5)

§ 48.9795(2)(d)4.

4) "Emergency guardianship": If it is demonstrated to the Ct that child's welfare requires immediate appointment of emergency guardian, Ct may appoint emergency guardian as provided under § 48.9795(6)

§ 48.9795(2)(d)5.

5) Powers of guardian

a. Parent retains all rights and duties accruing to parent as a result of parent-child relationship that are not assigned to guardian or otherwise limited by statute or Ct order

b. Guardian acting on child's behalf may exercise only those powers that guardian is authorized to exercise by statute or Ct order

c. Ct may authorize guardian to exercise only those powers necessary to provide for child's care, custody, and control and to exercise those powers in a manner appropriate to the child

d. Sec. 48.9795(2)(d) does not abridge the duties and authorities of a guardian appointed under Ch 48 outside of § 48.9795

§ 48.9795(7)

Q. Standby Guardianship

1) Standby guardian assumes duty and authority of guardian for child upon the incapacity, death, or debilitation and consent, of child's parent

2) Petition brought under § 48.978

§ 48.9795(8)

R. Successor Guardianship

1) Appointment; initial petition or during guardianship

a. Petition for appointment of successor guardian may be brought in initial petition of guardianship

b. One or more successor guardians, to assume duty and authority of full, limited, or temporary guardianship, can be included in the petition

c. Successor guardian's appointment becomes effective

- Immediately upon death, unwillingness or inability to act, resignation, or removal by the Ct of the initial guardian, or

- During a period of time when initial guardian is unable to fulfill duties, including during extended vacation or illness

d. If petition for successor guardian is brought after initial appointment of guardian, petition is heard in same manner, and subject to same requirements, as appointment of the initial guardian, except

- *See* para. 2), *infra*, for petitioning procedure when there is no successor guardian and guardian cannot continue appointment

e. Powers and duties of successor guardian shall be the same as those of the initially appointed guardian

f. Successor guardian shall receive copy of Ct order establishing or modifying initial guardianship and of order designating successor guardian

g. Upon occurrence of an event specified above in para. 1)c., the successor guardian shall notify Ct and request issuance of new letters of guardianship

h. Upon notification, Ct shall issue new letters of guardianship that specify that successor guardianship is permanent or that specify period for temporary successor guardianship

§ 48.9795(8)(b)

2) Appointment when no guardian

a. If guardian dies, is removed by Ct order, or resigns and Ct accepts resignation, the Ct, on its own motion or upon petition of any interested person, may appoint a person who is fit, willing, and able to serve as successor guardian

b. Ct may, upon request of any interested person or on its own motion, direct that petition or motion for appointment of successor guardian be heard in same manner and subject to same requirements as provided under § 48.9795 for initial appointment of a guardian

c. If appointment under para. b., *supra*, is made without hearing, the successor guardian shall provide notice to all interested persons of appointment and right to petition for reconsideration of appointment of successor guardian

- Notice shall be served personally or by mail not later than 7 days after appointment

§ 48.9795(9)

S. Modification of Guardianship

1) Any interested person, or other person approved by the Ct, may request a modification of a guardianship order, or Ct, on its own motion, may propose modification

2) Request shall

a. Set forth in detail the nature of proposed modification

b. Allege facts sufficient to show that there has been a substantial change in circumstances since last order affecting guardianship was entered

c. Allege facts sufficient to show that proposed modification would be in child's best interest, and

d. Allege any other information that affects advisability of Ct's disposition

§ 48.9795(9)(b)

3) Ct shall hold hearing on the matter before any modification of guardianship order if request or motion indicates that new information is available that affects the advisability of Ct's guardianship order

Hearing is not necessary if Ct receives written waivers of objections to modification, signed by all interested persons other than child, and Ct approves waivers

§ 48.9795(9)(c)

4) If hearing is held, person requesting or proposing modification shall notify all interested persons at least 7 days before hearing of date, place, and purpose of hearing. Copy of request or proposal shall be attached to the notice

§ 48.9795(9)(c)

5) Ct may order modification if, at hearing, Ct finds that person proposing the modification has proved by clear and convincing evidence that there has been a substantial change in circumstances and determines that modification would be in child's best interests

6) Order for modification under § 48.9795(9) cannot change placement of child under supervision of Ct pursuant to § 48.13, 48.133, or 48.14(1)–(10) or (12) or Ch 938, other than to modify guardianship order entered under § 48.9795

T. Review of Guardian's Conduct

§ 48.9795(10)(a)

1) Ct that appointed the guardian of the person for a child has continuing jurisdiction over the guardian

§ 48.9795(10)(b)

2) Ct may impose a remedy under § 48.9795(10)(d) if a guardian of a child does any of the following

a. Abuses or neglects the child or knowingly permits others to do so

b. Fails to disclose information specified in § 48.9795(4)(d) that would have prevented appointment of the person as guardian

c. Fails to follow or comply with the Ct's order

d. Otherwise fails to perform any duties as guardian under § 48.023

§ 48.9795(10)(c)

3) Any interested person or other person approved by Ct may file petition requesting review of guardian's conduct

4) Ct may on its own motion propose a review of guardian's conduct

5) Request or motion shall allege facts sufficient to show cause under § 48.9795(10)(b) for Ct to impose remedy under § 48.9795(10)(d)

6) Hearing on the request or motion will be heard not more than 30 days after the filing

7) Person requesting or proposing review shall provide at least 7 days' notice of hearing to child, parents, guardian, and any other persons required by Ct. Copy of request or motion shall be attached to notice

§ 48.9795(10)(d)

8) If after hearing Ct finds, by clear and convincing evidence, cause (as specified in § 48.9795(10)(b)) to order remedy, Ct may do any of the following:

a. Remove the guardian

b. Remove the guardian and appoint a successor guardian

c. Enter any other order that may be necessary or appropriate to compel the guardian to carry out guardian's duties, including an order setting reasonable rules of visitation with child

d. Modify guardian's duties and authority

e. Require guardian to pay any costs of the proceeding, including costs of service and Atty fees, if Ct finds that guardian's conduct was egregious

§ 48.9795(11)

U. Termination of Guardianship

1) Guardianship under § 48.9795 shall continue until child attains age of 18 years unless any of the following occurs:

a. Guardianship is for a lesser period of time and that time has expired

b. Child marries

c. Child dies

d. Child's residence changes from Wis to another state and a guardian is appointed in the new state of residence

e. Guardian dies, or resigns and Ct accepts resignation, and a successor guardian is not appointed

f. Guardian is removed for cause under § 48.9795(10)(d)1. and a successor guardian is not appointed

g. Ct terminates guardianship on the request of parent or child under § 48.9795(11)(b)

h. Ct terminates guardianship upon child's adoption

§ 48.9795(11)(b)

2) Termination on request of parent or child

a. Parent or child may file petition requesting that guardianship order entered under § 48.9795(4)(h)2., (5), (6), (8), or (9) be terminated

b. Petition shall alleged facts sufficient to show that

- There has been a substantial change in circumstances since the last order affecting the guardianship was entered,
- Parent is fit, willing, and able to carry out guardian's duties or no compelling facts or circumstances exist demonstrating that guardianship is necessary, and
- Termination of guardianship would be in child's best interests

c. Ct shall hold hearing on petition unless written waivers of objections to termination of guardianship are signed by all interested persons and Ct approves waivers

d. If a hearing is to be held, parent or child requesting termination shall provide notice at least 7 days before hearing to child, parents, guardian, and any other persons required by Ct

e. Copy of the petition shall be attached to the notice. Ct shall terminate the guardianship if Ct finds that petitioner has proved allegations in petition under § 48.9795(11)(b)1. by preponderance of the evidence

§ 48.9795(12)

V. Visitation by Child's Grandparents and Stepparents

1) In § 48.9795(12), "stepparent" means the surviving spouse of a deceased parent of a child, whether or not the surviving spouse has remarried

2) Grandparent or stepparent of the child may file a petition for visitation of the child if

   a. One or both parents of a child are deceased, and

   b. Child is in the custody of the surviving parent or any other person, whether or not the person with custody is married

3) Grandparent or stepparent may file petition in a guardianship or temporary guardianship proceeding under § 48.9795 that affects the child or may file petition to commence independent action under § 48.9795(12)

4) Except as provided in § 48.9795(12)(cm), Ct may grant reasonable visitation privileges to grandparent or stepparent if surviving parent or other person who has custody of child has notice of hearing and if Ct determines that visitation is in child's best interest

5) Whenever possible, in making a determination under § 48.9795(12)(b), Ct shall consider the child's wishes

6) Ct may not grant visitation privileges to grandparent or stepparent under § 48.9795(12) if grandparent or stepparent has been convicted under § 940.01 of 1st-degree intentional homicide, or under § 940.05 of 2nd-degree intentional homicide, of a parent of the child, and conviction has not been reversed, set aside, or vacated

   This prohibition does not apply if Ct determines by clear and convincing evidence that visitation would be in child's best interests. Ct shall consider the child's wishes in making the determination

7) Ct may issue any necessary order to enforce a visitation order that is granted under § 48.9795(12), and may from time to time modify the visitation privileges or enforcement order for good cause shown

8) If grandparent or stepparent granted visitation privileges with respect to a child under § 48.9795(12) is convicted under § 940.01 of 1st-degree intentional homicide, or under § 940.05 of 2nd-degree intentional homicide, of a parent of the child, and conviction has not been reversed, set aside, or vacated, Ct shall modify visitation order by denying visitation with the child upon petition, motion, or order to show cause by a person having custody of the child, or upon Ct's own motion, and upon notice to grandparent or stepparent granted visitation privileges

   This prohibition does not apply if Ct determines by clear and convincing evidence that visitation would be in the child's best interests. Ct shall consider the child's wishes in making the determination

9) Sec. 48.9795(12) applies to every child in Wis whose parent or parents are deceased, regardless of the date of death of the parent or parents

§ 48.9795(13)

W. Prohibitions on Visitation

1) Ct may not grant to a parent of a child who is the subject of a proceeding under § 48.9795 visitation rights with the child if the parent has been convicted under § 940.01 of the 1st-degree intentional homicide, or under § 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside, or vacated

§ 48.9795(13)

2) This prohibition does not apply if Ct determines by clear and convincing evidence that visitation would be in the child's best interests. Ct shall consider the child's wishes in making the determination

§ 48.831

3. Guardianship for Child Without Living Parent—Adoptability Finding Sought

§ 48.831(1m), § 48.13(1)

A. Following may file CHIPS petition for appointment as guardian for child without living parent

1) DCF

2) Cty Dept

3) Licensed child welfare agency

4) Relative or family member of child

5) Person with whom child has resided who has acted as parent of child

6) Guardian appointed under § 48.9795 whose resignation as guardian has been accepted by a Ct

§ 48.831(1r)

B. Notice required

1) Ct shall provide notice of the fact-finding hearing to all interested parties as provided in § 48.27(6)

2) If Ct knows or has reason to know that child is Indian child, the Ct shall provide notice to Indian child's Indian custodian and tribe in manner specified in § 48.028(4)(a) and, if unknown, to US Sec'y of Interior

§ 48.831(1r), (2)

C. Report required: report with information specified in § 48.425(1)(a) and (am) as ascertainable to be filed at least 5 days before hearing

1) If petition filed by DCF, Cty Dept, or child welfare agency, then Ct shall order DCF, Cty Dept, or child welfare agency to prepare report

2) If petition filed by relative or other person as specified under § 48.831(1m)(d), Ct shall order DCF or child welfare agency, if DCF or child welfare agency consents, or Cty Dept to file a report containing required information

§ 48.831(2)

3) If child is Indian child, Ct may order DCF, Cty Dept, or child welfare agency to prepare report, or Ct may request tribal child welfare dept of Indian child's tribe, if that Dept consents, to prepare report

4) Report must contain as much of information below as is ascertainable

§ 48.425(1)(a)

a. Social history of child

§ 48.425(1)(am)

b. Medical record of child

- Medical and genetic history of birth parents and family members
- Medical and genetic information furnished by birth parents about child's grandparents, aunts, uncles, brother, and sisters

c. Report of medical exam of either birth parent within 1 year before petition

d. Report of child's prenatal care and medical condition at birth

e. Medical and genetic history of child

f. Any other relevant medical and genetic information

§ 48.425(1)(g)

5) If agency determines adoption unlikely or not in child's best interest, report must include

a. Plan for placing child in permanent family setting

- See permanency planning, **JV 9**

b. Recommendation as to agency to be named guardian, person to continue guardianship under § 48.977(2), or guardian to be appointed under § 48.977(2)

§ 48.831(3)

D. Fact-finding hearing

1) Any party may present evidence relevant to whether child has living parent

2) If Ct finds living parent

a. Must dismiss petition, or

b. Grant petitioner leave to amend petition to TPR petition

§ 48.831(4)

3) If Ct finds no living parent

a. Must proceed to dispositional hearing

§ 48.315(2)

4) Delays, continuances, and extensions may be granted by Ct

a. For good cause in open Ct on record

b. For only as long as necessary

§ 48.315(1)(j)

c. If continuance granted at request of Indian child's Indian custodian or tribe, Ct must allow up to 20 days for reasonable period of delay resulting from continuance

§ 48.831(4)

E. Dispositional hearing

1) Any party may present evidence relevant to disposition

a. Includes expert testimony

§ 48.426(3)(a)–(d)

2) Ct must consider following factors, if applicable

a. Likelihood of child's adoption

b. Age and health of child at time of disposition and, if applicable, at time child removed from home

c. Whether child has substantial relationships with other family members and whether it would be harmful to child to sever those relationships

d. Wishes of child

§ 48.831(4)(cm)

e. If Indian child who is in custody of an Indian custodian, Ct may not remove child from Indian custodian unless

- Clear and convincing evidence shown that continued placement likely to result in emotional or physical damage to child (requires expert testimony)
- Active efforts taken per § 48.028(4)(d)
- Order of placement preferences followed

§ 48.831(4)(b)

3) If Ct finds adoption in child's best interest

a. Ct must order child placed in guardianship and custody of one of following

§ 48.57(1)(e), (hm)

- Cty Dept authorized or licensed to accept guardianship and place children

§ 48.61(5)

- Child welfare agency licensed by DCF to accept guardianship and place children
- DCF
- If Indian child, must comply with §§ 48.831(4)(cm), 48.028(4)(d), and 48.028(7)(b) or (7)(c) (unless good cause under § 48.028(7)(e))

§ 48.831(4)(e)

b. Custodian to prepare permanency plan within 60 days after date of order

§ 48.831(4)(e)

- Information that relates to child's parents or returning child home need not be included
- Ct to hold annual permanency review hearing under § 48.38(5)
- See **JV 9** for permanency planning

§ 48.43(5)

c. Agency must report to Ct on status of child at least once each year no less than 30 days before anniversary of date of order until child adopted or reaches age 18

§ 48.43(7)

d. If agency is DCF, and permanent adoptive or subsidized guardianship placement not in progress 2 years after entry of order, DCF may petition Ct to transfer legal custody to Cty Dept unless child was initially taken into custody under § 48.195(1m) (safe-haven statute)

§ 48.831(4)(c)

4) If Ct finds adoption not in child's best interest, Ct to order

a. Guardianship to DCF

b. Custody to Cty Dept, or, in Cty with population of 750,000 or more, DCF, or a licensed child welfare agency under contract with DCF

§ 48.831(4)(e)

- Custodian must prepare permanency plan within 60 days after date of order
- Information that relates to child's parents or returning child home need not be included
- See **JV 9** for permanency planning

§ 48.43(5)

c. Agency must report to Ct on status of child at least once each year no less than 30 days before anniversary of date of order until child adopted or reaches age 18

- Ct must hold annual permanency review hearing

d. See § 48.831(4)(cm) if Indian child: Ct must find clear and convincing evidence (including expert testimony) that serious emotional or physical harm is likely to occur, and Ct must find that active efforts have failed. Child's appointed custodian must follow order of placement preferences unless good cause shown

4. Appointment of Guardian for Child/Juv Found CHIPS or JIPS

RMC Form JG-1606

A. Ct must find all of the following

§ 48.977(2)(a)

1) Child/Juv has been found CHIPS or JIPS under § 48.13(1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), (11m) or § 938.13(4) and placed or continued in placement outside the home pursuant to Ct orders, or agency recommends placement of child in the home of a guardian in dispositional Ct order

§ 48.977(2)(b)

2) Person nominated as guardian is person with whom child placed, or in whose home placement of the child is recommended under § 48.977(2)(a), and it is likely placement with person will continue for extended time or until child reaches 18 years of age

§ 48.977(2)(c)

3) Person is willing and able to serve as guardian for that time period

§ 48.977(2)(d)

4) It is not in child's best interest to have TPR petition filed

§ 48.977(2)(e)

5) Child's parent (if one) or parents (if two) neglecting, refusing, or unable to carry out guardian duties

§ 48.977(2)(f)

6) Agency has made reasonable efforts to return the child to the home but reunification with parents unlikely or contrary to child's best interest and further reunification efforts are unlikely to be made or are contrary to child's best interest, or agency primarily responsible for providing services to child under court order has made reasonable efforts to prevent removal from home, while assuring child's health and safety, but continued in-home placement would be contrary to child's welfare

a. Child's health and safety are paramount

b. Findings must be made on case-by-case basis on circumstances specific to child, and information must be documented in order

§ 48.355(2d)(b)1.–5.

c. Reasonable efforts finding not necessary under certain aggravated circumstances

§ 48.977(3)

B. If Ct appoints guardian under § 48.977(2), it may designate the child's placement as the child's permanent foster placement, only for purposes of § 48.368(2) and § 938.368(2)

§ 48.368(2)

1) If dispositional, revision, or extension order under Ch 48 is in effect, order remains in effect until earliest of

a. 30 days after guardianship terminates

b. Ct enters change-in-placement order under § 48.357, or

c. Ct order terminates disposition, revision order, or extension order or

d. Child attains 18

§ 48.977(4)

C. Procedure

§ 48.977(4)(a)

1) Petition may be filed by child, child's guardian, Indian custodian, or legal custodian, child's GAL, child's parent, person with whom child is placed (or in whose home placement is recommended under § 48.977(2)(a)) if seeking appointment as guardian, DCF, Cty Dept, licensed child welfare agency assigned primary responsibility to provide services to child, or person representing interests of public under § 48.09

§ 48.977(4)(b)

2) Petition entitled "In the Interest of (child's name), a person under the age of 18," to include

a. Name, birth date, and address of child, and whether the child has been adopted

§ 48.977(4)(b)2.

b. Names and addresses of the child's parent(s), guardian, and legal custodian and, names and addresses of persons nominated as child's guardian and successor guardian

c. Date child/Juv found CHIPS or JIPS and

- Dates of Ct orders placing or continuing placement of child outside home, OR
- Date of report under § 48.33(1) or § 938.33(1) in which placement of child in home of person is recommended, if child has not been placed

d. Facts and circumstances establishing conditions listed in A.2)–6), above

e. Statement of whether proceedings subject to UCCJEA or ICWA and, if child may be subject to ICWA, names and addresses of the child's Indian custodian, if any, and tribe, if known

§ 48.977(4)(c)1.

3) Petitioner has petition and notice of hearing served upon

a. Child 12 or older

b. Child's guardian and legal custodian

c. Child's GAL

d. Child's counsel

e. Child's parent

f. Persons to whom notice required under § 48.27(3)(b)1. (when paternity not established)

g. Person nominated as guardian

§ 48.977(4)(c)1.gm.

h. Person nominated as successor guardian

i. Person representing interests of public under § 48.09

j. Agency primarily responsible for providing services to the child under Ct order

§ 48.977(4)(c)2m.

k. If Indian child, Indian custodian, tribe and, if necessary, US Sec'y of Interior

§ 48.977(4)(c)2.

4) Service is by first class mail or personal service at least 7 days before hearing or, if party cannot be served with reasonable diligence, by publication as class 1 notice in newspaper determined likely to give notice considering residence of party if known, or residence of relatives of the party, if known or last-known location of the party

a. If Indian child, notice as required by § 48.028(4)(a)

§ 48.977(4)(cm)

5) Plea hearing

a. Hearing to determine whether any party wishes to contest petition scheduled with reasonable time for parties to prepare but no more than 30 days after petition filed

b. Nonpetitioning parties and child, if 12 or older and otherwise competent to do so, shall state whether they wish to contest the petition

c. Before accepting no contest plea Ct shall

- Address parties present and determine plea made voluntarily with understanding of nature of facts alleged, nature of potential disposition, and nature of legal consequences of the petition
- Establish whether any promises or threats made to induce plea
- Alert unrepresented parties to the benefits of legal representation
- Make inquiries to establish factual basis for plea of no contest

d. Ct may proceed directly to disposition after no contest plea or grant request for adjournment for no more than 30 days

e. If petition contested or Ct does not accept no contest plea, Ct must set date for fact-finding hearing with reasonable time to prepare but no more than 30 days from plea hearing

§ 48.977(4)(d)

6) Fact-finding hearing

a. Trial to Ct. No right to jury

b. Any party may present evidence relevant to whether conditions in Sec. A. above have been met

- Must be established by clear and convincing evidence

c. If Ct makes such findings may proceed directly to disposition or grant adjournment for no more than 30 days

§ 48.977(4)(e)

d. Ct report

- Ct orders person or agency primarily responsible for providing Ct-ordered services to child to file report at least 48 hours before dispositional hearing

- Report contains written summary under § 48.38(5)(e) and as much information about appointment of guardian as is reasonably ascertainable

- If child has been placed outside the home for less than 6 months, agency must include dispositional Ct report and permanency plan if one has been prepared. Report should contain as much information about appointment of guardian as is reasonably ascertainable

§ 48.977(4)(fm)

7) Dispositional hearing

§ 48.977(4)(g)

a. Best interest of child prevailing factor

b. Consider report and the following

- Whether the person would be suitable guardian

- Willingness and ability of person to serve as guardian for extended period or until child is 18

- Wishes of child

§ 48.977(4)(g)4.

- If Indian child, order of placement preferences per § 48.028(7)(b) or (7)(c) (unless good cause per § 48.028(7)(e)). A strong attachment of the child to the person or a strong commitment of the person to caring permanently for the child does not, in itself, constitute good cause for departing from that order

c. Not limited to enumerated evidence

§ 48.977(4)(h)

d. Disposition entered within 10 days after dispositional hearing

- Dismiss petition if appointment of person as guardian not in child's best interest
- Order person appointed as guardian under § 48.977(5)(a) or limited guardian under § 48.977(5)(b) if found to be in best interest of child

§ 48.977(4)(i)

e. Child's permanency plan continues to be reviewed after appointment of limited guardian

§ 48.977(5)

D. Duties and authority of guardian

1) Full guardian—unless limited, guardian shall have all the duties and authority in § 48.023

2) Limited guardian—Ct may order that duties and authority be limited as specified by the order of appointment or any revised order. Provisions of statutes concerning duties and authority of guardian shall apply to limited guardian as relevant and except as limited by order of appointment

§ 48.977(5m)

E. Successor guardian

If guardian dies or becomes incapacitated, any person authorized to file a petition under § 48.977(4)(a) may petition for appointment of person named as child's prospective successor guardian (in subsidized guardianship agreement or amended subsidized guardianship agreement under § 48.623(2) entered into before guardian's death or incapacity) as successor guardian to assume duty and authority of guardian

§ 48.977(6)

F. Revision of guardianship order

1) May be requested by any person authorized to file petition or on motion of Ct

2) Proposal for revision shall set forth in detail nature of proposed revision, allege facts sufficient to show a substantial change in circumstances since last order affecting guardianship and that proposed revision in best interest of child, and allege other information affecting advisability of disposition

3) Hearing required if proposal indicates new information affecting advisability of current order unless written waivers of objections to revision signed by all parties entitled to receive notice are approved by Ct

4) Notice of hearing given by Ct at least 7 days before hearing, including place and purpose of hearing and attaching copy of request or proposal

5) Ct may order revision at hearing if substantial change in circumstances proved by clear and convincing evidence and revision in best interest of child

§ 48.977(7)

G. Termination of guardianship

1) Guardianship terminates at date set in order appointing guardian, when child turns 18, or when terminated by Ct, whichever is earliest

§ 48.977(7)(b)

2) Any person authorized to file petition may ask that guardian be removed for cause by alleging facts showing guardian has been neglecting, refusing, or unable to discharge the guardian's trust and by alleging other information affecting advisability of disposition

a. Hearing held unless written waivers of objections to removal signed by all parties entitled to receive notice and approved by Ct

b. Notice of hearing by Ct to all persons entitled to receive notice at least 7 days before hearing, giving date, place, and purpose of hearing, and attaching copy of request

c. Guardian shall be removed for cause if proved at hearing by clear and convincing evidence that guardian neglecting, refusing, or unable to discharge trust and if removal in best interest of child

§ 48.977(7)(c)

3) Guardian may resign at any time if resignation accepted by Ct

§ 48.977(7)(d)

4) Parent may request termination of guardianship in request showing a substantial change in circumstances since last order affecting guardianship entered and parent willing and able to carry out duties of guardian and termination in best interest of child

a. Hearing held on parent's request unless written waiver signed by all parties entitled to receive notice and approved by Ct

b. Ct notifies all persons entitled to notice of hearing at least 7 days before hearing, giving date, place, and purpose of hearing and attaching a copy of request

c. At hearing, Ct shall terminate guardianship if finds by clear and convincing evidence a substantial change in circumstances since last order and parent is willing and able to carry out duties of guardian and in best interest of child to terminate the guardianship

§ 48.977(7)(e)

5) If Ct terminates parental rights under § 48.427(3p), the Ct shall terminate guardianship under § 48.977(7)(e)

§ 48.977(8)

H. Relationship to Other Guardianship Procedures

1) Sec. 48.977 does not abridge the duties or authority of a guardian appointed under § 48.9795

2) Nothing in § 48.977 prohibits an individual from petitioning a Ct under § 48.9795 for appointment of a guardian

5. Judicial Appointment of Standby Guardian for Child

§ 48.978(1)

A. Definitions

1) "Attending physician" means a licensed physician who has primary responsibility for care of parent who files petition or makes written designation, or a physician acting on behalf of a physician with primary responsibility for care of the parent

   a. If no physician is responsible for care of parent, "attending physician" means any licensed physician familiar with medical condition of parent

2) "Debilitation" means a person's chronic and substantial inability, as a result of a physical illness, disease, impairment, or injury, to care for his or her child

3) "Incapacity" means a person's chronic and substantial inability, as a result of a mental impairment, to care for his or her child

§ 48.978(2)(a)

B. Who may file petition

1) Parent of a child may file petition for judicial appointment of a standby guardian of the person or estate or both of the child

   a. Petition may include nomination of an alternate standby guardian

      - If primary appointee unwilling or unable to serve, or
      - If Ct determines appointment of primary appointee not in child's best interests

2) Petition must be joined by each parent of child unless

   a. If parent cannot with reasonable diligence locate the other parent, and submits proof satisfactory to Ct of reasonable diligence, petition may be filed by one parent; or

   b. If parent locates other parent but other parent refuses to join in the petition or indicates he or she is unwilling or unable to exercise guardianship, if parent filing the petition submits proof satisfactory to Ct of that refusal, unwillingness, or inability, Ct may grant petition filed by one parent

§ 48.978(2)(b)

C. Contents of petition

1) Petition shall be entitled "In the interest of (child's name), a person under the age of 18" and set forth the following

a. Name, birth date, and address of child

b. Names and addresses of child's parent(s), guardian and legal custodian

c. Name and address of person nominated as standby guardian and alternate standby guardian, if any

d. Duties and authority petitioner wishes standby guardian to exercise

e. Statement of whether duty and authority of standby guardian to become effective on petitioner's incapacity, death, or on debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first

f. Statement that there is a significant risk that petitioner will become incapacitated or debilitated or die within 2 years after date on which the petition filed and factual basis for statement

g. If parent cannot with reasonable diligence locate other parent, a statement that child has no other parent willing and able to exercise duties and authority of guardianship and who, with reasonable diligence, can be located and a statement of efforts made to locate other parent

h. If other parent was located, a statement that child has no other parent who is willing and able to exercise guardianship and that the nonpetitioning parent has refused to join in the petition or is unwilling or unable to assume guardianship

i. Description of child's income and assets, if any

j. Statement of whether proceedings are subject to UCCJEA

§ 48.978(2)(b)11.

k. Statement of whether child may be subject to ICWA and name and address of child's Indian custodian, if any, and tribe, if known

§ 48.978(2)(c)

D. Service and notice

1) Petitioner shall cause petition and notice of time and place of hearing to be served on all the following

a. Child if 12 or older

b. Child's guardian and legal custodian

c. Child's GAL

d. Child's counsel

e. Child's other parent, if that parent has not joined in the petition and can with reasonable diligence be located

f. Persons to whom notice is required under § 48.27(3)(b)1. (when paternity not established)

g. Person(s) nominated as standby guardian and alternate standby guardian

§ 48.977(4)(c)2m.

h. If Indian child, Indian custodian, and tribe or, if required, US Sec'y of Interior

2) Service by certified mail or by personal service under § 801.11(1)(a) and (b) at least 7 days before the hearing, or if such service cannot be accomplished with reasonable diligence, by publication of notice as class 1 notice under Ch 985

a. In determining which newspaper likely to give notice as required under § 985.02(1), petitioner shall consider

- Residence of party, if known, or
- Residence of relatives of party, if known, or
- Last-known location of party

§ 48.978(2)(d)

E. Plea hearing

1) To determine whether any party wishes to contest petition

a. Nonpetitioning parties and child 12 or older or otherwise competent state whether they wish to contest petition

2) Held within 30 days after filing petition

§ 48.978(2)(i)

3) If petitioner medically unable to appear at any hearing, Ct may waive appearance except on motion of party for good cause shown

§ 48.978(2)(d)

4) If petition not contested, Ct may immediately proceed to dispositional hearing

5) If petition contested, fact-finding hearing must be held within 30 days after plea hearing

§ 48.978(2)(e)

F. Fact-finding hearing

1) To the Ct

2) Relevant issues

a. Whether there is significant risk petitioner will become incapacitated, debilitated or die within 2 years after date petition filed

b. Whether child has parent other than petitioner willing and able to exercise duty and authority of guardianship

c. Whether petitioner made diligent efforts to locate other parent who has not been located

d. Whether other parent's refusal to join in petition is reasonable

Barstad v Frazier
118 Wis. 2d 549 (1984)

- Note: The Committee believes that a finding that the other living parent's refusal to join is reasonable requires a finding that that parent is unable or unfit to parent

§ 48.978(2)(f)

3) Burden of proof is clear and convincing evidence

4) Ct must make findings on four points above in paras. 2)a.–d. and finding regarding whether person nominated as standby guardian is willing and able to act

5) If all five factors found, Ct shall immediately proceed to dispositional hearing unless adjournment requested

§ 48.978(2)(g)

G. Dispositional hearing

1) Must be held immediately unless adjournment granted for no more than 30 days after plea hearing or fact-finding hearing

§ 48.978(2)(h)

2) Prevailing factor is best interests of child

3) Ct must consider

a. Whether nominated person would be a suitable guardian of the child

b. Willingness and ability of person nominated as guardian to serve

c. Wishes of the child

§ 48.978(2)(j)

4) Within 10 days after dispositional hearing Ct shall enter one of following dispositions

a. Dismiss petition if appointment of standby guardian not in child's best interests

b. Appoint person nominated as standby guardian if in child's best interests

§ 48.978(2)(k)

H. Order

1) Order must include statement of whether standby guardianship is full or limited

2) Order must include statement of when standby guardianship goes into effect, which may be

a. On receipt by standby guardian of a determination of petitioner's incapacity

b. On receipt by standby guardian of certificate of petitioner's death

c. Upon determination of petitioner's debilitation and written consent of petitioner that guardianship go into effect

§ 48.978(2)(L)3.

- Consent must be in writing signed by petitioner in presence of two witnesses 18 years of age or older, not to include standby guardian, and also signed by standby guardian

- Person other than witnesses and standby guardian may sign in presence of petitioner and adult witnesses at direction of petitioner who is physically unable to sign

§ 48.978(6)(a)

3) Beginning of duty and authority of standby guardian does not divest a parent of any parental rights

§ 48.978(6)(b)

4) Unless limited, standby guardian has all duties and authority specified in § 48.023

a. Ct may order or parent may provide in written designation that duties be limited

§ 48.978(7)

5) Relationship to other guardianship proceedings

a. Rights, remedies, and procedures in § 48.9795 apply to action for standby guardianship except when different provision in § 48.978

b. Sec. 48.978 does not abridge duties or authority of guardian under § 48.9795

c. Nothing in § 48.978 prohibits petition for guardianship of the person under § 48.9795 or for guardianship of the estate under Ch 54

§ 48.978(2)(L)

I. Commencement of guardianship

1) Duty and authority of standby guardian are effective upon receipt of documentation of incapacity, death, or debilitation and consent as required by order

2) Standby guardian shall file determination or certificate with Ct that entered order within 90 days after standby guardian receives it

a. Failure to do so may result in rescission of standby guardianship

§ 48.978(2)(m)

J. Suspension or rescission of standby guardianship

§ 48.978(2)(m)

1) Duty and authority of standby guardian shall be suspended when guardian receives copy of determination of recovery or remission of petitioner

§ 48.978(5)

a. Copy of determination shall be in writing made to a reasonable degree of medical certainty by attending physician and shall include opinion of physician as to extent and probable duration of recovery or remission

§ 48.978(2)(m)

b. Standby guardian must file determination of recovery or remission within 90 days after receiving it with Ct that entered order

- Failure to do so may result in rescission of guardianship order

c. Duty and authority of standby guardian shall begin again upon documentation as provided in **Sec. I.**1) above

§ 48.978(2)(n)1.

2) At any time before duty and authority of standby guardian begin, if Ct finds that required findings under **Sec. F.** above no longer apply or that standby guardianship is no longer in child's best interest, Ct may rescind guardianship order

§ 48.978(2)(n)2.

3) Standby guardian may renounce appointment before duty and authority as guardian begin by written renunciation filed with Ct that issued order and with notice to petitioner in writing

a. Ct shall rescind order

§ 48.978(2)(n)3.

4) Standby guardian may resign appointment after duty and authority as guardian begin by filing with Ct and notifying petitioner, if living, of resignation

a. Ct may accept resignation and rescind guardianship if it finds that to be in best interests of child

§ 48.978(2)(n)4.

5) Petitioner may revoke standby guardianship before duty and authority of guardianship begins by filing revocation with Ct with notice to standby guardian

a. Ct shall rescind guardianship order

§ 48.978(2)(n)5.

6) Petitioner may revoke guardianship order after duty and authority of guardianship begin by filing revocation with Ct with notice to standby guardian

a. Ct may rescind guardianship if in best interests of child

§ 48.978(3)

6. Parental Designation of Standby Guardian for Child

A. Parent (regardless of health status) may designate standby guardian

§ 48.978(3)(b)2.

B. Designation must substantially conform to format in statutes

C. Designation must state when authority and duty of standby guardian to begin

1) Begins on parent's incapacity or death upon receipt by standby guardian of determination of incapacity or certificate of death

2) Begins on parent's debilitation and consent upon receipt by standby guardian of determination of debilitation and parent's written consent

§ 48.978(3)(c)

D. Standby guardian shall file petition for judicial appointment as standby guardian of child within 180 days after date on which standby guardianship begins

1) If guardian fails to file petition within 180 days, standby guardian's duty and authority ends 180 days after date on which standby guardianship began

2) If petition is filed after expiration of 180 days, duty and authority of the standby guardian begins again on date petition is filed

§ 48.978(3)(e)

E. Petition and notice are similar to those required in Sec. 5. Above

§ 48.978(3)(f)–(i)

F. Procedures for hearing and determining petition are similar to those required in Sec. 5. Above

§ 48.978(3)(j), (k)

G. Requirements for revocation by parent and renunciation by guardian are similar to those for suspension and rescission in Sec. 5. Above

§ 48.979(1)(a)

7. Delegation of Powers by Parent

§ 48.979(1)(a)

A. A parent who has legal custody of a child, by a power of Atty that is properly executed by all parents who have legal custody of the child, may delegate to an agent, for a period not to exceed one year, any of the parent's powers regarding the care and custody of the child

§ 48.979(1m)

1) Delegation of more than one year requires Ct approval

JV 17: INDIAN CHILD WELFARE ACT (ICWA)

1. Introduction and Policy

In Wisconsin, Indian children are covered by two provisions: the federal Indian Child Welfare Act (ICWA), 25 USC 1901–1963, and the Wisconsin Indian Child Welfare Act (WICWA), §§ 48.028, 938.028. There are also federal regulations under ICWA, 25 CFR pt. 23, subpt. I (at https://www.ecfr.gov). ICWA requires the Ct to apply the applicable state or federal law that provides the greatest protection for Indian families. *See* 25 USC 1921; 25 CFR 23.106.

§ 48.01(2), § 48.028
§ 938.01(3), § 938.028

A. Best Interest—In an Indian child/Juv custody proceeding, the best interests of the Indian child/Juv shall be determined in accord with federal ICWA, 25 USC 1901–1963

Haaland v Brackeen
143 S. Ct. 1609, 1631
(2023)

ICWA consistent with constitutional exercise of Congress's Article I authority

B. Policy—It is the policy of the state of Wis that Cts and child welfare agencies will

1) Cooperate fully with Indian tribes to ensure compliance with ICWA

2) Promote best interests of Indian children/Juvs and promote the stability and security of Indian tribes and families by

a. Establishing minimum standard for the removal of Indian children/Juvs from their families

b. Using practices that prevent out-of-home care placements of Indian children/Juvs

c. When out-of-home care placements are necessary, place Indian children/Juvs in placements that reflect the unique values of child's/Juv's Indian culture and are best able to allow child/Juv to maintain relationship with child's/Juv's tribe and tribal community

§ 48.299(9), § 938.299(10)

C. Under WICWA, any time in proceeding that Ct determines or has reason to know child/Juv is Indian child/Juv, Ct shall provide notice to child's/Juv's parent, Indian custodian, and tribe in manner specified in § 48.028(4)(a)/ § 938.028(4)(a):

1) Next hearing in proceeding may not be held until at least 10 days after receipt of notice or, if identity or location of parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of notice by US Sec'y of Interior

§ 48.299(9)
§ 938.299(10)

2) On request of parent, Indian custodian, or tribe, Ct shall grant a continuance of up to 20 days to enable requester to prepare for hearing

25 CFR 23.107

D. Under ICWA, the Ct must ask each participant in the child custody hearing whether the participant knows or has reason to know that the child is an Indian child

If there is sufficient reason to know that the case involves an Indian child, but insufficient evidence to determine whether the child is or is not an Indian child, the Ct is to treat as an Indian child until determined on the record that the child is not an Indian child

§ 48.028(7)(b)
§ 938.028(6)(a)

E. Under WICWA, if Indian child/Juv is being removed from the home of a parent or Indian custodian and placed outside the home, Ct must designate one of the placements in § 48.028(7)(b) or § 938.028(6)(a), in order of preference listed, unless Ct finds good cause as stated in § 48.028(7)(e) or § 938.028(6)(d). *See* Sec. 7.B.3)c., *infra*

2. Jurisdiction, Transfers, Tribal and Parental Rights, and Interrelationship with State Law

§ 48.028(3)(b)1.
§ 938.028(3)(b)1.

A. ICWA Exclusive Jurisdiction—Indian tribe has exclusive jurisdiction over Indian child/Juv involved in child/Juv custody proceeding residing or domiciled within reservation

§ 48.028(3)(b)1.
§ 938.028(3)(b)1.

1) Tribe also has continuing exclusive jurisdiction over ward of tribal Ct regardless of child's/Juv's residence or domicile

§ 48.028(3)(b)2.
§ 938.028(3)(b)2.

2) Child welfare authorities may take an Indian child/Juv into custody under §§ 48.19–.21/§§ 938.19–.21 to prevent imminent physical harm or damage to Indian child/Juv who resides or is domiciled on reservation but is temporarily located off the reservation

a. Must release the Indian child/Juv upon determining that custody is no longer necessary to prevent imminent harm or damage, and

b. Must restore child/Juv to Indian parent or custodian; must release child/Juv to appropriate official of Indian child's tribe; or must initiate Indian child/Juv custody proceeding, as may be appropriate

§ 48.028(3)(c)
§ 938.028(3)(c)

B. If parent, Indian custodian, or child's/Juv's tribe petitions, State Ct must transfer case to tribe unless

1) Either parent objects

2) Indian child's/Juv's tribe has no tribal Ct or that Ct declines jurisdiction

3) Good cause to deny transfer is shown by clear and convincing evidence

a. Good cause is any of the following:

- Indian child/Juv is at least 12 years old and objects
- Evidence necessary to decide the case cannot be presented in tribal Ct without undue hardship, and tribe cannot adequately mitigate the hardship (e.g., by audiovisual means, etc.)
- Petitioning tribe has proper legal notice and has not advised Ct in writing that it is monitoring the case and may request later transfer, and petition for transfer is filed more than 6 months after tribe received notice of proceedings (or more than 3 months after notice in TPR proceeding)

b. Perceived inadequacy of tribal social services may not be considered in determining good cause

25 CFR 23.118

4) Under ICWA, the finding of good cause to deny the transfer must be on the record or in a written opinion of the Ct. Additionally, the following CANNOT be considered in the good-cause determination:

a. Whether proceeding is at advanced stage if parent, Indian custodian, or tribe did not receive notice until an advanced stage

b. Whether prior proceedings involving the child where no petition to transfer was filed

c. Whether transfer could affect child's placement

d. Child's cultural connections with the tribe or reservation

e. Socioeconomic conditions or any negative perception of tribal social services or Ct system

§ 48.028(3)(d)
§ 938.028(3)(d)

5) State Ct shall decline jurisdiction if petitioner has improperly removed Indian child/Juv from the custody of parent or Indian custodian or improperly retained custody after visit or other temporary relinquishment

a. Return child/Juv to the custody of parent or Indian custodian unless return would subject child/Juv to substantial and immediate danger or threat of that danger

§ 48.028(3)(f)
§ 938.028(3)(f)

6) State Ct shall give full faith and credit to public acts, records, and judicial proceedings of Indian tribe applicable to Indian child/Juv custody proceedings

C. Indian child's/Juv's tribe or Indian custodian has right to

§ 48.028(4)(b)
§ 938.028(4)(b)

1) Counsel—whenever an Indian child is the subject of a Ch 48 proceeding, or an Indian Juv is subject of proceeding under § 938.13(4), (6), (6m), or (7), involving the removal of the Indian child/Juv from the home of a parent or Indian custodian, placement in out-of-home care, or TPR, the parent or Indian custodian has right to Ct-appointed counsel as provided in § 48.23(2g)/§ 938.23(2g)

Ct may also appoint counsel for Indian child/Juv under § 48.23(1m) or (3)/§ 938.23(1m) or (3) if Ct finds it is in best interests of child/Juv

25 CFR 23.111(g)

2) If a parent or Indian custodian appears without counsel, the Ct must advise them of their right to Ct-appointed counsel, request transfer to tribal Ct, object to transfer, request additional time to prepare, and intervene (if not already a party)

§ 48.028(3)(e)
§ 938.028(3)(e)

3) Intervene at any point in Indian child custody proceedings for out-of-home care placement, TPR, or delegation of parental powers, or at any point in Indian Juv custody proceedings

§ 48.028(4), § 48.273
§ 938.028(4), § 938.273

4) Notice when party seeks out-of-home care placement of, TPR to, or delegation of parental powers regarding Indian child or in any involuntary proceeding under § 938.13(4), (6), (6m), or (7) involving out-of-home care placement of Indian Juv

a. For the first hearing, notice must be in writing and must provide notice of pending proceeding and of right to intervene to Indian parent/custodian and tribe by registered mail, return receipt requested. Receipt filed with Ct. Notices for subsequent hearings may be by mail, personal delivery, or fax, not by e-mail

b. If parent, tribe, or Indian custodian cannot be located, notice to Sec'y of Interior in like manner

c. No proceeding held until at least 10 days after receipt of notice by Indian parent/custodian and tribe or 15 days after receipt by Sec'y of Interior

d. Upon request, Ct must grant extension of 20 days

§ 48.028(4)(a)

e. Different notification requirements apply in UCHIPS

§ 48.028(4)(c)
§ 938.028(4)(c)

5) Examine all reports or documents filed with Ct

a. Right belongs to each party in proceeding for out-of-home care placement, TPR, or return of custody under § 48.028(8) (adoption vacated, set aside, or terminated)

§ 48.028(6)
§ 938.028(5)

6) Move Ct to invalidate any out-of-home care placement, delegation of parental powers under § 48.979, or TPR on showing the action violated any provision of ICWA

a. Motion may be brought by any parent or Indian custodian from whom child/Juv was removed; by child's/Juv's tribe; or by child/Juv

b. Ct shall invalidate if showing that action violated any provision of ICWA

§ 48.01(2), § 48.028
§ 938.01(3), § 938.028
§ 822.04
IP v St (In Int of DSP)
166 Wis. 2d 464 (1992)

D. Interrelationship with state law

1) ICWA supersedes provisions of Ch 48, Ch 938, and UCCJEA, and best interests of Indian child/Juv must be determined consistent with ICWA in child/Juv custody proceedings governed by ICWA

25 USC 1921

2) When state law provides higher standard of protection to rights of parent or Indian custodian than does ICWA, Ct must apply state standard

§ 822.04, § 48.01(2)
25 CFR 23.103

3. Application

A. ICWA does apply to

1) Out-of-home care placements: institutions, relatives, guardians, or conservators

2) TPR

3) Preadoptive placements

4) Adoptive placements

§ 48.979(1)(dm)

5) Delegation of power by parent

6) Temporary physical custody hearings

7) Voluntary placement agreements

§ 938.028(2)(b)

8) Status offenses that result in out-of-home placements

B. Notice and Petition Requirements

Sheboygan Cty DHS v Neal JG (In re TPR to Arianna RG)
2003 WI 11
259 Wis. 2d 563

1) Duty to notify tribe under ICWA arises when "Ct knows or has reason to know" child/Juv may be an Indian child/Juv. However, "vague" and "sketchy" assertions that child/Juv may be Indian child/Juv are not sufficient to raise notice requirement

Recommendation

a. Cts should pursue reasonable avenue of inquiry when issue of Indian heritage is raised, including notifying the BIA

25 CFR 23.107

b. If there is reason to know the child is an Indian child, but there is insufficient evidence to determine that the child is an Indian child, the court must treat the child as an Indian child, "unless and until it is determined on the record that the child does not meet the definition of an 'Indian child'"

§ 48.028(4)(a)

NOTE: Under WICWA, the notice provisions apply to "any involuntary proceeding."

§ 48.255(1)(cm), (g)
§ 938.255(1)(cm), (g)

2) If child/Juv is or may be subject to ICWA, petition must set forth name and address of Indian custodian, if any, and tribe, if known, and reliable and credible information showing:

a. Continued custody by Indian parent or custodian is likely to result in serious emotional or physical damage

b. Active efforts have been made to prevent breakup of Indian family and have been unsuccessful

C. Special Proceedings Under ICWA

25 CFR 23.113

1) Emergency Removal

a. Any emergency removal or placement must be terminated immediately when it is no longer necessary to prevent imminent physical damage or harm to the child by one of the following:

- Initiation of a child custody proceeding subject to the provisions of ICWA;
- Transfer of child to jurisdiction of tribe; or
- Restoring child to parent or Indian custodian

b. Ct must promptly hold a hearing and make a finding on the record that emergency placement/removal is necessary to prevent imminent physical damage or harm to the child

c. An emergency proceeding should not be continued for more than 30 days unless the Ct finds:

- Returning the child to the parent or Indian custodian would subject the child to imminent physical damage or harm
- The Ct has been unable to transfer the proceeding to the appropriate tribe; and
- It has not been possible to initiate a "child custody proceeding"

2) Voluntary Placement Agreements, see **Sec. 7.B.**1), *infra*

25 USC 1903(1)
MLS v St (In Int of MLS)
157 Wis. 2d 26 (CA 1990)
25 CFR 23.103(b)

D. ICWA does NOT apply to

1) Delinquency

2) Award of custody to parent in divorce

E. WICWA does NOT apply to

See § 938.028(2)(b)

1) Delinquency

2) Award of custody to parent in divorce

3) Emergency custody under §§ 48.19–48.21/§§ 938.19–938.21

§ 48.028(3)(d)
§ 938.028(3)(d)

4. Failure to Follow ICWA

A. When any petitioner in Indian child/Juv custody proceeding before a State Ct has improperly removed child/Juv from custody of parent or Indian custodian or has improperly retained custody

1) Ct shall decline jurisdiction over petition

2) Ct shall return child/Juv to parent or Indian custodian UNLESS

a. Return would subject child/Juv to substantial and immediate danger or threat of danger

§ 48.028(2)
§ 938.028(2)

5. Definitions/Terms Unique to ICWA

Note: See applicable definitions at **JV 1, Children's Code, Sec. 2**, and **Juvenile Justice Code, Sec. 2**.

25 CFR 23.2

A. Active efforts (ICWA): Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family

When an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan

To the maximum extent possible, active efforts "should" be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the tribe and conducted in partnership with the child, parents, extended family members, Indian custodian, and tribe

Haaland v Brackeen
143 S. Ct. 1609, 1632–34
(2023)

ICWA's requirement for active efforts is not a violation of 10th Amendment

§ 48.028(4)(g)
§ 938.028(4)(f)

B. Active efforts (WICWA): An ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's/Juv's tribe and that utilizes the available resources of the Indian child's/Juv's tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child/Juv, other individual Indian caregivers, and other culturally appropriate service providers

§ 48.028(2)(a)

C. Adoptive placement—Permanent placement of Indian child

§ 48.028(2)(am)
§ 938.028(2)(a)
25 USC 1903(2)

D. Extended family members—Member of child's/Juv's extended family as defined by tribal law or custom. In absence of custom or law, a person who is 18 years or older and is child's/Juv's grandparent, aunt, uncle, brother, sister, brother/sister-in-law, niece, nephew, first or second cousin, or stepparent

§ 48.028(2)(b)

E. Former Indian custodian—Indian custodian of an Indian child before termination of parental rights and adoption of the child

§ 48.028(2)(c)

F. Former parent—Parent of Indian child before termination of parental rights and adoption of the child

§ 48.02(8d)
§ 938.02(8d)
25 USC 1903(3)

G. Indian—Any person who is a member of an Indian tribe or an Alaska native and member of regional corporation under 43 USC 1606

§ 48.02(8g)
§ 938.02(8g)
25 USC 1903(4)

H. Indian child/Juv—Unmarried person under the age of 18 who is a member of an Indian tribe or eligible for enrollment and the biological child/Juv of a member of a tribe

§ 48.028(2)(d)

I. Indian child custody proceeding—Proceeding governed by ICWA that may result in an adoptive, preadoptive, or out-of-home care placement of an Indian child, a TPR to an Indian child, or a delegation of parental powers regarding an Indian child

25 CFR 23.103(b)
25 USC 1903(1)

1) ICWA does not apply to award of custody in divorce or other action affecting the family or delinquency actions

§ 48.028(2)(e)
§ 938.028(2)(c)

2) WICWA does not apply to award of custody in divorce or other action affecting the family, delinquency, or emergency removal actions

§ 48.02(8m)
§ 938.02(8m)
25 USC 1903(5)

J. Indian child's/Juv's tribe—Tribe in which Indian child/Juv is member or eligible for membership

1) If child/Juv is member or eligible to be member of more than one tribe, Indian tribe with which child/Juv has most significant contacts

§ 48.02(8p)
see also § 938.02(8e)
25 USC 1903(6)

K. Indian custodian—Indian person who has legal custody of Indian child under state law or tribal law or custom, or to whom parent of child had transferred temporary physical care, custody, and control

Under WICWA, this may include a parent's agent under § 48.979

§ 938.028(2)(b)

L. Indian Juv custody proceeding—Proceeding under § 938.13(4), (6), (6m), or (7) that is governed by federal ICWA and in which an out-of-home care placement may occur

§ 48.02(8r)
25 USC 1903(8)

M. Indian tribe—Tribe, band, nation, or organized group or community of Indians eligible for services to Indians provided by Sec'y of Interior because of Indian status, including Alaska native village as defined in 43 USC 1602(c)

§ 48.028(2)(e)
§ 938.028(2)(c)

N. Out-of-home care placement—Removal of Indian child/Juv from the home of his parent or Indian custodian for temporary placement in foster care, group home, RCCCY, or home of relative or guardian, when Indian parent or custodian cannot have the child/Juv returned on demand

Does not include adoptive or preadoptive placement of child, a delegation of parental powers, emergency change in placement under § 48.357(2)(b)/§ 938.357(2)(b), or holding child/Juv in custody under §§ 48.19–.21 or under §§ 938.19–.21

25 USC 1903(9)

O. Parent (ICWA) means any biological parent of parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established

Adoptive Couple
v Baby Girl
133 S. Ct. 2552 (2013)

Some provisions of ICWA might not apply if the Indian parent has never had custody of the child

§ 48.02(13)
§ 938.02(13)

P. Parent (WICWA)—Includes biological parent, husband who consented to artificial insemination of wife, parent by adoption

1) If nonmarital child whose parents have not intermarried or adopted, includes a person who has been conclusively determined to be the father under § 767.804, a person who has acknowledged paternity under § 767.805 or a similar statute of another state, or a person adjudicated to be father

2) Does not include person whose parental rights have been terminated

3) With respect to an Indian child/Juv and Indian parent, above definition applies; however, the adoption or acknowledgment of paternity can be pursuant to tribal law or custom

4) A parent's agent under § 48.979 could be a legal custodian but is not a "parent"

Adoptive Couple
v Baby Girl
133 S. Ct. 2552 (2013)
Kewaunee Cty DHS v RI
(In re TPR to MJ)
2018 WI App 7
379 Wis. 2d 750

5) Some provisions of ICWA and WICWA might not apply if the parent has never had custody of the child

§ 48.028(2)(f)

Q. Preadoptive placement—Temporary placement of Indian child in out-of-home care placement, other than shelter care facility, after termination of parental rights but before or in lieu of adoptive placement

Does not include emergency change in placement under § 48.437(2)

25 CFR 23.122

R. Qualified expert witness (ICWA): A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and "should" be qualified to testify as to the prevailing social and cultural standards of the tribe

A person may be designated by the tribe as being qualified to testify to the prevailing social and cultural standards of the tribe. The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the child

§ 48.028(2)(g)
§ 938.028(2)(d)

S. Qualified expert witness (WICWA) (in order of preference)

1) Tribal member of Indian child's/Juv's tribe recognized by the Indian child's/Juv's community as knowledgeable regarding customs relating to family organization or child-rearing practices

2) Member of another tribe knowledgeable regarding customs of the Indian child's/Juv's tribe relating to family organization or child-rearing

3) Professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the customs, traditions, and values of the Indian child's/Juv's tribe relating to family organization and child-rearing

4) Layperson with substantial experience in the delivery of child and family services to Indians and substantial knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian child's/Juv's tribe

§ 48.028(4)(f)
§ 938.028(4)(e)

5) To call an expert witness in a lower order of preference, party must establish diligent efforts to secure attendance of expert from higher order of preference

§ 48.02(15)
§ 938.02(15)

T. Relative—Parent, stepparent, brother or sister, step-brother or step-sister, half-brother or half-sister, brother-in-law or sister-in-law, first or second cousin, nephew or niece, uncle or aunt, step-uncle or step-aunt, or any person of a preceding generation as denoted by the prefix grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in § 48.02(15)/§ 938.02(15), even if marriage is terminated by death or divorce

1) With respect to an Indian child/Juv, relative includes an extended family member as defined § 48.028(2)(am)/§ 938.028(2)(a), whether by blood, marriage, or adoption (including adoption under tribal law or custom)

§ 48.02(15)
§ 938.02(15)

2) **For purposes of placement**, "relative" also includes a parent of a sibling of the child who has legal custody of that sibling

§ 48.028(7)(d)
§ 938.028(6)(c)

U. Social and cultural standards—The standards to be applied in meeting the placement preference requirements shall be the prevailing social and cultural standards of the Indian community in which the Indian child's/Juv's parents or extended family members reside or with which the Indian child's/Juv's parents or extended family members maintain social and cultural ties

§ 48.02(18j)
§ 938.02(18j)
25 USC 1903(12)

V. Tribal court—Ct having jurisdiction over Indian child/Juv custody proceedings and is either Ct of Indian offenses or Ct established and operating under code or custom of an Indian tribe or any other administrative body of an Indian tribe vested with authority over Indian child/Juv custody proceedings

§ 48.028(7)(c)
§ 938.028(6)(b)

W. Tribal or personal preferences—In placing Indian child/Juv under § 48.028(7)(a), (b), or (bm)/§ 938.028(6)(a) or (am), or in delegating parental powers under § 48.028(7)(a), if Indian child's/Juv tribe has established, by resolution, an order of preference that is different from order specified in § 48.028(7)(a) or (b)/§ 938.028(6)(a), the order of preference established by that tribe shall be followed, in absence of good cause, as described in § 48.028(7)(e)/§ 93.028(6)(d), to the contrary, so long as placement or delegation under § 48.028(7)(a) is appropriate for Indian child's special needs, if any, and placement under § 48.028(7)(b) or (bm)/Ch 938 is least restrictive setting appropriate for Indian child's/Juv's needs as specified in § 48.028(7)(b)/§ 938.028(6)(a)

1) When appropriate, the preference of the Indian child/Juv or parent shall be considered, and, when a parent who has consented to the placement or delegation evidences a desire for anonymity, that desire shall be given weight, in determining the placement or delegation

6. Notice and Continuances

§ 48.299(9)
§ 938.299(10)

A. If at any time in proceeding under Ch 48 or § 938.13(4), (6), (6m), or (7), Ct determines or has reason to know child/Juv is Indian child/Juv, Ct shall provide notice to child's/Juv's parent, Indian custodian, and tribe in manner specified in § 48.028(4)(a)/§ 938.028(4)(a)

1) Next hearing in proceeding may not be held until at least 10 days after receipt of notice or, if identity or location of parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of notice by US Sec'y of Interior

§ 48.028(4), § 48.273
§ 938.028(4), § 938.273

2) Notice when party seeks out-of-home care placement of, TPR to, or delegation of parental powers regarding Indian child or in any involuntary proceeding under § 938.13(4), (6), (6m), or (7) involving out-of-home care placement of Indian Juv

§ 48.028(4)(a)
§ 938.028(4)(a)
25 CFR 23.111(c)

a. Under WICWA, for the first hearing, the notice must be in writing and must provide notice of pending proceedings and of right to intervene to child's/Juv's parent/Indian custodian and tribe by registered mail, return receipt requested. Receipt filed with Ct. Notices for subsequent hearings may be by mail, personal delivery, or fax, but not e-mail

25 CFR 23.11
25 CFR 23.111

Under ICWA, the initial notice can be by registered or certified mail, with return receipt requested. The notice must include the statement regarding intervention, plus

- Names, birthdates, and birthplaces of child and parents
- Copy of petition, complaint, or other document initiating proceeding
- Name of petitioner and name and address of petitioner's attorney
- Right to Ct-appointed Atty, if indigent
- Right to be granted up to 20 additional days to prepare for the proceeding upon request
- Right to petition the Ct for transfer to tribal Ct
- Address and phone number of Ct and information related to all parties and individuals notified
- Potential legal consequences of proceeding on future parental and custodial rights of parent/custodian

- Parties must keep information in notice confidential

b. If parent, tribe, or Indian custodian cannot be located, notice to Sec'y of Interior in like manner

c. No proceeding held until at least 10 days after receipt of notice by parent/Indian custodian and tribe or 15 days after receipt by Sec'y of Interior

d. Upon request, Ct must grant extension of 20 days

§ 48.315(1)(j), (1m)
§ 938.315(1)(a)11.

B. Good cause for continuances includes a maximum of 20 days in a proceeding involving out-of-home care placement of child/Juv or TPR of a child the Ct knows or has reason to believe is an Indian child/Juv, resulting from a continuance granted at the request of the child's/Juv's parent, Indian custodian, or tribe to enable the requester to prepare for the proceeding. The § 48.315(1)(j) continuance provision does not apply in § 48.375(7) proceeding

7. Out-of-Home Care Placements, Emergency Removals, Temporary Changes in Placement, CHIPS/JIPS/UCHIPS Dispositional Placements, Voluntary TPR, and Records

Recommendation

Review **Appendix 8** (Judicial Checklist—Educational Stability) when considering impact of changing child's school

§ 48.028(2)(e)
§ 938.028(2)(c)

A. Emergency removals under §§ 48.19–.21/§§ 938.19–.21 and emergency changes in placement under § 48.357(2)(b)/ § 938.357(2)(b) are not "out-of-home care placements" under WICWA

B. Out-of-Home Care Placements—In General

1) Voluntary Placements Under ICWA

25 CFR 23.124(a)

a. The Ct must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is a reason to believe the child is an Indian child

25 CFR 23.124(b)

b. If there is reason to believe the child is an Indian child, the Ct must ensure that the petitioner has taken all reasonable steps to verify the child's status. If the consenting parent requests anonymity, the tribe must keep any documents or information confidential

25 CFR 23.124(c)

c. The Ct must ensure that the placement preferences are complied with unless there is good cause to depart from the order of preference

25 CFR 23.125

d. Consent by parent or Indian custodian to termination of parental rights, foster care, preadoptive, or adoptive placement must be in writing, recorded before a judge, and accompanied by the judge's written certification that the

terms and consequences were explained and understood. In addition, the Ct must explain the limitations on withdrawal of consent for the specific proceeding for which consent is given

§ 48.028(5)

2) Voluntary Placements under WICWA

a. Voluntary consent by a parent or Indian custodian to an out-of-home care placement of an Indian child under § 48.63(1)(a) or (b) or (5)(b) or a delegation of powers by a parent per § 48.979, is not valid unless the consent or delegation is executed in writing, recorded before a Judge, and accompanied by a written certification by the Judge that the terms and consequences of the consent or delegation of powers were fully explained in detail to parent or Indian custodian and were fully understood by them

b. The Judge shall also certify that the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language the parent or Indian custodian understood

c. Consent or delegation of powers given before or within 10 days after the birth of an Indian child in not valid

d. Parent or Indian custodian may withdraw consent or delegation for any reason at any time, and the Indian child shall be returned to the parent or Indian custodian

3) Involuntary Placements

§ 48.028(4)(d)
§ 938.028(4)(d)

a. Ct may not order an Indian child/Juv removed from the parent or Indian custodian to an out-of-home care placement unless all of the following occur:

- Ct or jury in Ch 48 proceeding (or Ct in Ch 938 proceeding) finds by clear and convincing evidence, including testimony of one or more qualified expert witnesses chosen in order of preference in § 48.028(4)(f)/ § 938.028(4)(e), that continued custody of Indian child/Juv by parent or Indian custodian is likely to result in serious emotional or physical damage to child/Juv

- Ct or jury in Ch 48 proceeding (or Ct in Ch 938 proceeding) finds by clear and convincing evidence that active efforts, as described in § 48.028(4)(g)1./§ 938.028(4)(f)1., have been made to provide remedial services and rehabilitation programs designed to prevent breakup of Indian child's/Juv's family and that those efforts have proved unsuccessful. Ct or jury in Ch 48 proceeding (or Ct in Ch 938 proceeding) shall make this finding notwithstanding that a circumstance specified in § 48.355(2d)(b)1.–5./§ 938.355(2d)(b)1.–4. applies

25 CFR 23.121

- Under ICWA, the evidence must show a causal relationship between the conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to this child

- Further, without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child

§ 48.028(7)(b)
§ 938.028(6)(a)

b. Any Indian child/Juv who is accepted for an out-of-home care placement shall be placed in the least restrictive setting that most approximates a family, that meets child's/Juv's special needs, if any, and that is within reasonable proximity to Indian child's/Juv's home, taking into account those special needs

§ 48.028(7)(b)
§ 938.028(6)(a)

c. In placing Indian child/Juv in an out-of-home care placement, preference shall be given, in the absence of good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d), to the contrary, to placement in one of the following, in order of preference listed:

- Home of an extended family member of the Indian child/Juv
- Foster home licensed, approved, or specified by the Indian child's/Juv's tribe
- Indian foster home licensed or approved by DCF (in Ch 48 case) or DOC (in Ch 938 case), Cty Dept, or child welfare agency
- Group home or RCCCY approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child/Juv

d. Must follow notice requirements set forth in § 48.357(1)(am)1g. and 2./§ 938.357(1)(am)1g.

C. Temporary Out-of-Home Care Placement

§ 48.028(7)(bm)
§ 938.028(6)(am)

1) Any Indian child/Juv who is placed in temporary out-of-home care placement shall be placed in the least restrictive setting that most approximates a family that meets child's/Juv's special needs, if any, and that is within reasonable proximity to the Indian child's/Juv's home, taking into account those special needs

§ 48.028(7)(bm)
§ 938.028(6)(am)

2) In placing Indian child/Juv in temporary out-of-home care placement, preference shall be given, in the absence of good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d), to the contrary, to placement in one of the following, in order of preference listed (unless emergency conditions necessitate departure from order):

a. Home of an extended family member of the Indian child/Juv

b. Foster home licensed, approved, or specified by Indian child's/Juv's tribe

c. Indian foster home licensed or approved by DCF (in Ch 48 case) or DOC (in Ch 938 case), Cty Dept, or child welfare agency

d. Group home or RCCCY approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of Indian child/Juv

§ 48.028(7)(c)
§ 938.028(6)(b)

3) If Indian child's/Juv's tribe has established, by resolution, an order of preference that is different from the order specified above, the order of preference established by that tribe shall be followed, in absence of good cause as described in § 48.028(7)(e)/§ 938.028(6)(d), to the contrary, so long as the placement or delegation under § 48.028(7)(a) is appropriate for the Indian child's special needs, if any, and the placement under § 48.028(7)(b) or (bm)/Ch 938 is the least restrictive setting appropriate for the Indian child's/Juv's needs as specified in § 48.028(7)(b)/§ 938.028(6)(a)

4) Under ICWA,

a. Good cause to depart from the order of preference "should" be based on one or more of the following

- Request of the parent(s), if they attest they have reviewed the placement options, if any, that comply with the order of preference
- Request of the child, if child is of sufficient age and capacity to understand the decision
- Presence of a sibling attachment that can be maintained only through particular placement
- Extraordinary needs of the child, such as specialized treatment services
- Unavailability of suitable placement

b. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement or based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement made in violation of ICWA

25 CFR 23.132

c. The reasons for good cause must be stated orally on the record or provided in writing on the record and to the parties. The Ct's determination of good cause must be made on the record or in writing

Haaland v Brackeen
143 S. Ct. 1609, 1634–35
(2023)

d. ICWA's "placement preference" standard does not violate the 10th Amendment

5) Under WICWA, good cause to depart from order of preference shall be determined based on one or more of the following

a. Request of the parent or Indian child/Juv (if of sufficient age and developmental level) unless the request is made to avoid application of ICWA or WICWA

b. Extraordinary needs of the Indian child/Juv requiring specialized treatment as established by expert witness testimony. (Length of time in placement does not itself constitute an extraordinary emotional health need)

§ 48.028(7)(e)
§ 938.028(6)(d)

c. Unavailability of a suitable placement after diligent efforts have been made to place in the order of preference

6) Must also comply with § 48.028(8) if Ct receives a petition for return of custody. See **Sec. D.** below

7) No change in placement may be made within 10-day period given in § 48.357(1)(am)/§ 938.357(1)(am) for parties to object, unless written waivers of objection are signed by

a. Parent, guardian, legal custodian, child/Juv if 12 years of age or older, child's/Juv's tribe, if child/Juv is an Indian child/Juv who has been removed from the home of his or her parent or Indian custodian

b. CEM if 12 years of age or older, her parent, guardian, legal, or Indian custodian, UC's GAL, and CEM's tribe, if she is an Indian child who has been removed from the home of her parent or Indian custodian

c. AEM and UC's GAL

D. Change in Placement

§ 48.357(1)(c)3.
§ 938.357(1)(c)3.

1) If an Indian child/Juv is removed from in-home to out-of-home care placement, order shall also contain findings under § 48.357(2v)(a)4./§ 938.357(2v)(a)4. and comply with order of placement preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b), unless Ct finds good cause as described in § 48.028(7)(e)/§ 938.028(6)(d)

§ 48.028(8)(b)
§ 938.028(7)

2) If Indian child/Juv is removed from an out-of-home care placement for the purpose of placing the child/Juv in another out-of-home care placement, must comply with § 48.028(8)(a) regarding return of custody

a. If petition for return of custody received, Ct must provide notice to guardian and legal custodian of the Indian child/Juv, to all other interested parties as in § 48.27(6), and to the Indian child's/Juv's former parent and former Indian custodian. At the end of the hearing, Ct shall grant the petition for return unless shown not in the best interest of the child/Juv

§ 48.357(1)(am)3.
§ 938.357(1)(am)3.

3) If Ct changes placement from one out-of-home care placement to another, change must comply with placement preferences under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b), unless good cause is found as described in § 48.028(7)(e)/§ 938.028(6)(d)

§ 48.357(1)(am)2., 2m., 2r.
§ 938.357(1)(am)2., 2m., 2r.

a. Hearing is required, except when dispositional order authorized change in placement or when the change of placement is done pursuant to § 48.357(1)(am)2r./§ 938.357(1)(am)2r.

§ 48.357(1)(am)1., 1g.
§ 938.357(1)(am)1., 1g.

b. Notice requirements also apply

E. Preadoptive placements. See JV 14 (Adoption)

F. Dispositional Placements

1) See above for ALL out-of-home care placements

§ 48.028(4)(d)
§ 48.335(3j)
§ 938.028(4)(d)
§ 938.335(3j)

2) In cases in which an agency is recommending an out-of-home placement for Indian child/Juv currently living in home of parent or Indian custodian, the agency shall present specific information showing all of the following:

a. Continued custody of the Indian child/Juv by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child/Juv

- This finding must be supported by clear and convincing evidence, including testimony of one or more qualified expert witnesses

b. Active efforts under § 48.028(4)(d)2./§ 938.028(4)(d)2. have been made to prevent breakup of the Indian child's/Juv's family and that those efforts have proved unsuccessful

Adoptive Couple v Baby Girl 133 S. Ct. 2552 (2013)

- "Active efforts" under ICWA (25 USC 1912(d)) do not apply in cases when the Indian parent abandoned the child before birth and the child has never been in the Indian parent's legal or physical custody

NOTE: The applicability of *Baby Girl* may be limited because Wisconsin's version of ICWA may provide more protections to Indian parents than the federal version

c. Placement recommended is in compliance with order of preference under § 48.028(7)(b)/§ 938.028(6)(a) or, if applicable, § 48.028(7)(c)/§ 938.028(6)(b), or if placement is not in compliance with that order, good cause, as described in § 48.028(7)(e)/§ 938.028(6)(d), for departing from the order

§ 48.335(6), § 938.335(6)

3) If dispositional order places child/Juv outside home, parent, if present at hearing, shall be requested to provide names and other identifying information of 3 relatives of child/Juv or other individuals 18 years of age or older whose home parent requests Ct consider as placements for child/Juv unless information previously provided under § 48.21(3)(f)/ § 938.21(2)(e) or (3)(f)

§ 48.33(4)(d)1.
§ 938.33(4)(d)1.

4) If child/Juv has one or more siblings who have been removed from the home or for whom out-of-home placement is recommended, agency must submit report with specific information showing reasonable efforts to place child/Juv in a placement that enables sibling groups to remain together, unless report includes specific information showing joint placement would be contrary to safety or well-being of child/Juv or any siblings

§ 48.33(4)(d)2.
§ 938.33(4)(d)2.

a. If recommendation not for joint placement, report must provide specific information that reasonable efforts made to provide frequent visitation or other ongoing interaction between siblings, unless report includes specific information showing visitation or interaction would be contrary to safety or well-being of child/Juv or any siblings

§ 48.355(2)(cm)1.
§ 938.355(2)(cm)1.

5) Ct shall order Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) to conduct a diligent search to locate and provide notice of information specified in § 48.21(5)(e)2.a.–e. to all relatives of child/Juv under § 48.335(6)/§ 938.335(6) and to all adult relatives as defined under § 48.21(5)(e)1./§ 938.21(5)(e)1. within 30 days after removal unless child/Juv is returned home within that period

a. Ct may also order Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) to conduct diligent search to locate and provide notice to all other adult individuals (named under § 48.335(6)/ §938.335(6)) within 30 days after removal unless child/Juv returned home sooner

b. No notice required if Cty Dept or responsible agency (or DCF in Ch 48 case in Cty with population of 750,000 or more) has reason to believe it would be dangerous to child/Juv or parent if child/Juv were placed with that person or adult relative

§ 48.355(2)(d)
§ 938.355(2)(d)

6) Must provide copy of dispositional order to Indian custodian and tribe, if child/Juv in out-of-home care placement

§ 48.028(5)(b)

G. Voluntary TPR

1) Voluntary consent to TPR is not valid unless

a. Executed in writing

b. Recorded before a Judge

c. Accompanied by written certification by the Judge that the terms and consequences of consent were fully explained in detail to and were fully understood by the parent

d. Judge must certify that parent fully understood explanation in English or interpreted for parent

2) Consent under this provision not valid if given before 11th day after birth of child

§ 48.028(5)(b)

3) Parent may withdraw consent at any time before final TPR order

25 USC 1915(e)

H. Records of each placement of an Indian child shall

1) Be maintained by the State

2) Evidence efforts to comply with order of preferences under ICWA

3) Be available at any time upon request of Sec'y of Interior or Indian child's tribe

4) Record-keeping requirement of ICWA does not violate 10th Amendment

Haaland v Brackeen
143 S. Ct. 1609, 1636–38 (2023)

APPENDICES

APPENDIX 1
SERIOUS JUVENILE OFFENDER (SJO) OFFENSES
Under § 938.34(4h)(a)

I. Age 14 or older and found delinquent for committing or conspiring to commit any of the following:

§ 939.32(1)(a)	Attempt to commit a crime with a life penalty
§ 940.03	Felony murder
§ 940.06	Second-degree reckless homicide
§ 940.21	Mayhem
§ 940.225(1)	First-degree sexual assault
§ 940.305	Taking hostages
§ 940.31	Kidnapping
§ 941.327(2)(b)4.	Product tampering resulting in death
§ 943.02	Arson of buildings
§ 943.10(2)	Burglary while armed or with commission of a battery
§ 943.231(1)	Carjacking (dangerous weapon)
§ 943.32(2)	Armed robbery (or attempted armed robbery)
§ 948.02(1)	First-degree sexual assault of a child
§ 948.025(1)	Repeated acts of sexual assault against the same child
§ 948.30(2)	Abduction of another's child (force or threat)

II. Age 10 or older and found delinquent for the following:

§ 940.01 *	First-degree intentional homicide (or attempted first-degree intentional homicide)*
§ 940.02 *	First-degree reckless homicide*
§ 940.05 *	Second-degree intentional homicide*

* There is original jurisdiction in Adult Ct for these offenses. However, the Adult Ct may "reverse waive" a Juv age 10 through 14 to Juv Ct under § 938.183(1m)(b) and a Juv Ct may impose SJO disposition of § 938.538 on the Juv who was "reverse waived."

APPENDIX 2

SUBSTANTIAL RISK OF PHYSICAL HARM TO ANOTHER
(Correctional Placement Offenses)

Under §§ 938.208(1)(a) and 938.34(4m)(b)1.

§ 940.01	First-degree intentional homicide **(after reverse waiver)**
§ 940.02	First-degree reckless homicide **(after reverse waiver)**
§ 940.03	Felony murder
§ 940.05	Second-degree intentional homicide (**after reverse waiver**)
§ 940.19(2)–(6)	Felony battery
§ 940.198	Physical abuse of an elder person
§ 940.21	Mayhem
§ 940.225(1)	First-degree sexual assault
§ 940.31	Kidnapping
§ 941.20(3)	Discharge of firearm from a vehicle
§ 943.02(1)	Arson
§ 943.231(1)	Carjacking
§ 943.32(2)	Armed robbery
§ 947.013(1t), (1v), or (1x)	Felony harassment
§ 948.02(1), (2)	First- or second-degree sexual assault of a child
§ 948.025	Repeated sexual assault of a child
§ 948.03	Physical abuse of a child
§ 948.085(2)	Sexual assault of child by substitute care provider (employee or volunteer at specified types of facilities)

APPENDIX 3
VIOLENT CRIMES

Under § 939.632(1)(e)

1. Any felony under

§ 940.01	First-degree intentional homicide

§ 940.02	First-degree reckless homicide
§ 940.03	Felony murder
§ 940.05	Second-degree intentional homicide
§ 940.09(1c)	Homicide by intoxicated use of vehicle or firearm
§ 940.19(2), (4) or (5)	Substantial battery, aggravated battery
§ 940.198(2)(a) or (c)	Physical abuse of an elder person (intentional)
§ 940.21	Mayhem
§ 940.225(1), (2) or (3)	Sexual assault
§ 940.235	Strangulation or suffocation
§ 940.302(2) (when § 940.302(2)(a)1.b. applies)	Human trafficking for purposes of commercial sex act
§ 940.305	Taking hostages
§ 940.31	Kidnapping
§ 941.20	Endangering safety by use of dangerous weapon
§ 941.21	Disarming a peace officer
§ 943.02	Arson of buildings; damage of property by explosives
§ 943.06	Molotov cocktails
§ 943.10(2)	Burglary while armed, burglary with battery
§ 943.231(1)	Carjacking (Armed operating vehicle without owner's consent)
§ 943.32(2)	Armed robbery
§ 948.02(1), (2)	Sexual assault of a child
§ 948.025	Repeated sexual assault of same child
§ 948.03(2)(a) or (c)	Physical abuse of a child
§ 948.05	Sexual exploitation of a child
§ 948.051	Trafficking of a child

§ 948.055 Forced viewing of (or listening to) sexual activity

§ 948.07 Child enticement

§ 948.08 Soliciting a child for prostitution

§ 948.085 Sexual assault of child placed in substitute care

§ 948.30(2) Abducting another's child

2. Solicitation under § 939.30, conspiracy under § 939.31, or attempt under § 939.32 to commit a Class A felony

3. Any misdemeanor under

§ 940.19(1) Battery

§ 940.225(3m) Fourth-degree sexual assault

§ 940.32(2) Stalking

§ 940.42 Intimidation of a witness

§ 940.44 Intimidation of victims

§ 941.20(1) Endangering safety by use of dangerous weapon

§ 941.23 Carrying concealed weapon

§ 941.231 Carrying concealed knife

§ 941.235 Carrying firearm in public building

§ 941.38(3) Criminal gang member solicitation and contact

APPENDIX 4
ORIGINAL ADULT COURT JURISDICTION
Under § 938.183

1. Juv adjudicated delinquent and alleged to have violated

§ 940.20(1) Battery by a prisoner,* OR
§ 946.43 Assault by a prisoner*

while placed in Juv correctional facility, Juv detention facility, or secured RCCCY

2. Juv adjudicated delinquent and alleged to have committed a violation of

§ 940.20(2m) Battery to a probation, extended supervision, parole, community supervision, or aftercare agent*

3. Juv 10 to 17 years of age alleged to have attempted or committed violation of

§ 940.01	1st-degree intentional homicide*

4. Juv 10 to 17 years of age alleged to have committed a violation of

§ 940.02	1st-degree reckless homicide or*
§ 940.05	2nd-degree intentional homicide*

5. Juv alleged to have violated any state criminal law if convicted of previous violation following waiver, or if Juv Ct previously waived Juv and criminal proceedings pending

6. Juv alleged to have violated any state criminal law if convicted of previous violation over which adult Ct had original jurisdiction or if proceedings still pending in adult Ct

*Adult Ct also has jurisdiction over any offense that could be joined with the original jurisdiction offense under § 971.12(1). *See* § 938.183(1)(ar)

For provisions relating to "Reverse waiver" or Juv dispositions imposed by Adult Cts for Juvs subject to these provisions, please see JV 5 and Appendix 6

APPENDIX 5
WAIVER
Under § 938.18

When Court may waive exclusive jurisdiction in favor of Adult Ct

1. Juv 15 or over at time offense allegedly committed

2. Juv 14 or older at time offense allegedly committed and charge is violation of

§ 940.03	Felony murder
§ 940.06	2nd-degree reckless homicide
§ 940.225(1) or (2)	1st- or 2nd-degree sexual assault
§ 940.305	Taking hostages
§ 940.31	Kidnapping
§ 943.10(2)	Armed burglary
§ 943.32(2)	Armed robbery
§ 943.87	Robbery of financial institution

§ 961.41(1) Manufacture, distribution, or delivery of controlled substance or controlled substance analog

3. Any drug or other felony if committed at request of or for benefit of a criminal gang

APPENDIX 6
JURISDICTION BY OFFENSE

Offense	Juv. Age	Original Adult Juris.	Orig. Juv. Ct Juris.	Waiver Avail.	Reverse Waiver Available
1. Any violation of State Criminal Law EXCEPT as listed in 2–13 below AND	15 to 17	No	Yes	Yes	
a. Delinquent alleged to have committed battery/assault by prisoner or battery to community supervision/aftercare agent	10 to 17	Yes*	No		Yes***
b. Juv previously convicted in Adult Ct or proceedings pending in Adult Ct	10 to 17	Yes*	No		Yes***
2. First-degree intentional homicide or attempted first-degree intentional homicide	10 to 17	Yes*	No		Yes ***
3. First-degree reckless homicide	10 to 17	Yes*	No		Yes***
4. Second-degree intentional homicide	10 to 17	Yes*	No		Yes***
5. Felony murder	14 to 17	No	Yes	Yes**	
6. Second-degree reckless homicide	14 to 17	No	Yes	Yes**	
7. Armed robbery	14 to 17	No	Yes	Yes**	
8. First- or second-degree sexual assault (BUT NOT sexual assault of child under § 948.02)	14 to 17	No	Yes	Yes**	
9. Kidnapping	14 to 17	No	Yes	Yes**	
10. Taking hostages	14 to 17	No	Yes	Yes**	
11. Drug manufacturing, distribution, or delivery (BUT NOT possession with intent to manufacture, distribute, or deliver)	14 to 17	No	Yes	Yes**	
12. Armed burglary	14 to 17	No	Yes	Yes**	
13. Any offense that would be felony if committed by adult when committed at request of or for benefit of criminal gang	14 to 17	No	Yes	Yes**	

* Adult Ct also has jurisdiction over any offense that could be joined with these offenses pursuant to § 971.12(1)

** If waiver granted on crime listed in 5 through 13, and prelim Ct does not find probable cause to believe Juv committed a crime listed in 5 through 13, Juv must be discharged but proceedings may be brought under Ch 938

*** In reverse-waiver hearing, if Ct does not find probable cause to believe Juv committed offense of which accused, under the circumstances set forth in § 938.183(1), Juv must be ordered discharged, but proceedings may be brought under Ch 938

APPENDIX 7
JURISDICTION BY AGE

Age	Offenses	Basis of Jurisdiction	Special Provisions
14	Felony murder; 2nd-degree reckless homicide; 1st- or 2nd-degree sexual assault; taking hostages; kidnapping; armed burglary (and battery while committing a burglary); armed robbery; manufacture, distribution, or delivery of a controlled substance, or any drug; or other felony at request of or for benefit of a criminal gang	14-year-old waiver law § 938.18(1)(a), (b)	If prelim hearing Ct does not find probable cause to believe Juv committed one of these crimes, Juv must be discharged but proceedings may be brought under Ch 938 § 970.035
15 & 16	Any	General Waiver Statute § 938.18	NONE
10 through 16	Any—If Juv was previously waived and convicted in Adult Ct or proceedings are pending in Adult Ct for previously waived offense	Original Criminal Court Jurisdiction § 938.183	Reverse Waiver Available § 970.032
10 through 16	Any—If Juv has previously been convicted of offense over which Adult Ct has original jurisdiction or has proceedings pending for such offense before Adult Ct	Original Criminal Court Jurisdiction* § 938.183	Reverse Waiver Available § 970.032
10 through 16	Battery by prisoner or assault by prisoner committed in a Juv correctional facility, a Juv detention facility, secured RCCCY, OR battery to community supervision/ aftercare agent	Original Criminal Court Jurisdiction* § 938.183	Reverse Waiver Available § 970.032

10 through 16	Attempted 1st-degree intentional homicide; 1st-degree intentional homicide; 2nd-degree intentional homicide; 1st-degree reckless homicide	Original Criminal Court Jurisdiction § 938.183	1) Reverse Waiver § 970.032 2) If prelim Ct does not find probable cause for "the violation" with which Juv charged, under circumstances set forth in § 938.183(1), Juv must be discharged but proceedings may be brought under Ch 938 3) If Juv 15 or over found guilty of lesser included offense, Adult Ct obligated to make delinquency finding and impose Juv disposition under certain circumstance § 938.183(1m)(c)3.

* Adult Ct also has jurisdiction over any offense that could be joined with original jurisdiction offense pursuant to § 971.12(1)

APPENDIX 8
JUDICIAL CHECKLIST—EDUCATIONAL STABILITY

Studies indicate that many children in out-of-home care perform below their peers academically and outcomes further decline when a change in placement results in a change of school setting.[1] The daily routine and established relationships at school or an early care program, such as child care, preschool, Head Start, 4K, and Early Childhood Special Education, often provide a source of stability for children removed from their homes. The Every Student Succeeds Act (ESSA) requires the school and child welfare agency to ensure that a child who is placed in out-of-home care remains in the school of origin unless determined collaboratively that it is not in the child's best interest.[2]

This checklist was designed to highlight key educational questions to assist judicial officers as they consider the impact of changing a child's school or early care setting as one of several factors in determining the most appropriate placement and conducting the overall best interest analysis. Judicial officers are encouraged to distribute this checklist to other professionals, such as attorneys and social workers, to help them prepare for questions they will be asked in court at hearings where there is a request to change the child's placement.

AT TEMPORARY PHYSICAL CUSTODY HEARING
OR WHEN THERE IS A PROPOSED CHANGE IN PLACEMENT:

1. Would the proposed placement result in a change of school or early care setting?

   No, verify that the parties have an opportunity to inform the court of their position on the proposal, and whether there are any circumstances that may affect the presumption.

   Yes, make the following inquiries:

   ✓ Ask the agency if there was a best interest determination made in collaboration with the school, including:

   — The child's educational and early care history, including friends, extra-curricular activities, adult support, number of schools attended, and academic progress.

   — The child's perspective on his or her education, including the child's wishes, graduation status, advanced placement classes, number of school changes child has already experienced, etc.

- ✓ Provide opportunity for the child, the child's parents, caregiver, and advocates (e.g., counsel, GAL, CASA, etc.) to inform the court of their position on the proposal and inquire whether a change in school would interfere with the ability of the child and parents to participate in educational planning.

2. When a change in schools is necessary, verify the following information:

   - ✓ There are no barriers to immediate and appropriate enrollment as provided for under the ESSA.

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[1] Courtney, M. (2004). *Educational Experiences of Children in Out of Home Care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago.

[2] See Best Interest Determination factors under the Every Student Succeeds Act: https://dpi.wi.gov/foster-care/best-interest-determination.

   - ✓ There are no issues with the transfer of records, as allowed under Wis. Stat. §§ 115.298 and 118.125(2)(q).
   - ✓ The child is connected to school staff and/or others to assist with the transition.
   - ✓ The parties have determined the transportation plan or an interim transportation plan, if needed.

3. Inquire if the child has additional service needs due to concerns such as behavior issues, truancy, poor academic performance, or failure to meet developmental milestones. For example: Birth to Three Assessment, Individualized Education Program (IEP), 504 Plan, trauma assessment, medication management, etc.

Judicial Checklist—Educational Stability is available online at https://www.wicourts.gov/courts/programs/docs/ccipeduchecklist.pdf.

APPENDIX 9
JUDICIAL CHECKLIST—PERMANENCY HEARING

A Permanency Hearing is a critical event at which the court must assess the appropriateness of a child's permanency goal and progress toward that goal. This checklist is designed to highlight key questions that the court should ask at every Permanency Hearing to elicit more detailed information.

AT EVERY PERMANENCY HEARING:

1. Address appearances, written information, and youth consultation:

- ❒ Are all parties and participants present, including the child? If not, did they receive proper notice?
- ❒ Has everyone received a copy of the Permanency Plan and any additional reports?
- ❒ Has each party, including the parents and child, been given an opportunity to be heard in court?
- ❒ Have you consulted with the parents and child? What is their opinion about the proposed plan?
- ❒ If child is 14 years or older, was the child consulted by the agency in preparation of the plan? Did the agency describe the programs and services for transition from out-of-home care to successful adulthood?

- ❒ If the child is not present, why not? When did the guardian ad litem (GAL) or adversary counsel consult with the child? What is the child's opinion about the proposed plan?
- ❒ Were any written statements submitted? If so, have they been distributed to all parties?
- ❒ Has the child's caregiver been given an opportunity to make a statement or submit comments in writing?
- ❒ Does the case involve an Indian child? Is the tribe present or has the tribe submitted a statement in writing?

2. Review the child's out-of-home placement status:

- ❒ How long has the child resided outside the home?
- ❒ What are the reasons for continued placement of the child? What prevents a safe return home with either parent today?
- ❒ Has the child resided outside the home for 15 out of the past 22 months? If yes, why hasn't a termination of parental rights been filed?

3. Examine the child's current placement:

- ❒ Does the current placement remain necessary, safe, and appropriate?
- ❒ Does the current placement meet all the child's physical, emotional, and educational needs?
- ❒ Does the child have opportunity to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities?
- ❒ How does the child feel about his or her current placement?
- ❒ Is the child placed with a relative? If not, why?
- ❒ Has the parent provided names of relatives? Has the agency searched for relatives and examined them as potential placements or adoptive resources? If not, why?
- ❒ If the child has siblings, are the child and siblings placed together?
  - ❒ If not, why? Are they spending time together? How often and in what setting? How is the sibling interaction going and is it appropriate and sufficient?
- ❒ If this case is subject to the Wisconsin Indian Child Welfare Act, is the child placed in accordance with the placement preferences under Wis. Stat. § 48.028(7) or those established by the child's tribe?
  - ❒ If not, is there good cause to depart from the order of preference?
  - ❒ What efforts have been made in the last six months to locate a placement that meets the preferences?

4. Evaluate progress made to address safety and the efforts made to rehabilitate the family:

❒ What progress has been made toward eliminating the causes for the out-of-home placement?

❒ What are the impending danger threats in the home? Have the parents' protective capacities increased?

❒ Have the agency, service providers, child, and parents complied with the permanency plan?

❒ What progress has each parent made toward the conditions of return?

❒ Are the parent and child spending time together? How often and in what setting? Is the level of supervision appropriate and sufficient? How is the family interaction going?

❒ What services has the agency offered or provided to the family? Are the services available for the parent to participate in? Are there additional services that should be offered? Have adequate efforts been made to involve appropriate service providers?

❒ If this case is subject to the Wisconsin Indian Child Welfare Act, has the agency engaged in active efforts under Wis. Stat. § 48.028(4)(g) to provide remedial services and rehabilitation programs designed to prevent the breakup of the family?

  ❒ Does it take into account the prevailing social and cultural values, conditions, and way of life of the child's tribe?

5. Discuss the child's permanency goal and any concurrent permanency goal:

❒ What are the proposed permanency goal and concurrent permanency goal (if any)? Is this different than the current goal(s)?

❒ Why is this goal(s) in the child's best interests and appropriate? How will this goal(s) provide stability and permanency?

❒ Is concurrent planning appropriate for this child? Why or why not?

❒ What is the date by which the permanency goal or concurrent permanency goal will be achieved?

❒ Have reasonable efforts been made to achieve the permanency goal, including through an out-of-state placement if appropriate?

6. Provide TPR warnings and Conditions for Return orally and in writing.

7. Schedule next hearing if appropriate.

FOR EACH PERMANENCY GOAL, EXPLORE THE FOLLOWING:

Return Home:

❒ What is the status of the original threats of danger and any new threats? What are the specific facts about changes in parent behavior, attitudes, motivation, and interactions?

❒ What is needed for an in-home safety plan to be sufficient?

❒ What supervision or case management will be provided after return home?

❒ Is a case closure order or modification of a family court order needed?

❒ Is trial reunification appropriate?

Placement for Adoption:

❒ What are the facts and circumstances supporting the grounds for termination of parental rights?

❒ Is the agency making reasonable efforts to locate an adoptive resource (foster parents and relatives)?

❒ Has a TPR petition been filed and, if not, what is the date it will be filed?

❒ What is the likelihood of adoption?

❒ Does the child have an identified permanent resource?

- ❒ If not, is the agency making reasonable efforts to locate permanent resource (such as relative search, Child Description for Adoption Recruitment, photo listing, video recruitment)
- ❒ If so, what recruitment efforts have been made?

❒ If this case is subject to the Wisconsin Indian Child Welfare Act:

- ❒ Is the tribe supportive of adoption as a permanency option?
- ❒ Is the agency making diligent efforts to locate an adoptive resource that meets the placement preferences under Wis. Stat. § 48.028(7)(a)?

Placement with a Guardian:

❒ What are the facts and circumstances supporting guardianship?

❒ Is the proposed guardian appropriate and willing to serve as a permanent family to the child?

❒ Can the guardian manage the relationship between the child and parents?

❒ How will this goal provide stability and permanency?

❒ Has a Wis. Stat. § 48.977 guardianship or subsidized guardianship been considered?

❒ Has the guardianship petition been filed and, if not, what is the date it will be filed?

❒ If this case is subject to the Wisconsin Indian Child Welfare Act, does the proposed guardian meet the placement preferences?

Permanent Placement with a Fit and Willing Relative:

❒ What are the facts and circumstances supporting this permanent placement?

❒ Is the proposed caregiver appropriate and willing to serve as a permanent family to the child?

❒ How will this goal provide stability and permanency?

❒ Why is guardianship or subsidized guardianship not being pursued?

Other Planned Permanent Living Arrangement (OPPLA) (age 16 or older only):

❒ Has the agency made intensive and ongoing efforts to return the child home or place for adoption, with a guardian, or with a fit and willing relative, and have those efforts proven unsuccessful?

❒ Why is OPPLA the best permanency goal for the child?

❒ Have compelling reasons been documented as to why it would not be in the child's best interests to have one of the other permanency goals?

❒ Does the child have regular, ongoing opportunities to engage in age or developmentally appropriate activities and is the caregiver applying the reasonable and prudent parent standard?

❒ Does the goal include an appropriate, enduring relationship with an adult (required)?

This checklist is also available at https://www.wicourts.gov/courts/programs/docs/permanency2.pdf.

Wisconsin Children's Court Improvement Program **March 2021**

APPENDIX 10
JUDICIAL CHECKLIST—
WISCONSIN INDIAN CHILD WELFARE ACT

The Wisconsin Indian Child Welfare Act (WICWA) codifies the federal Indian Child Welfare Act into state statutes. WICWA protects the best interests of Indian children while promoting stability and security of Indian tribes and families. WICWA **applies** to out-of-home placements in CHIPS, status offenses in JIPS, and guardianship cases, termination of parental rights (TPR) proceedings, and pre-adoptive and adoptive placements. WICWA **does not apply** to placements based on delinquent acts or family court proceedings when one of the parents has custody. Additional information on WICWA can be found at: https://wicciptraining.com/ELearningActivities.

APPLICABILITY

An "Indian child" is defined as an unmarried person under the age of 18 who is either:

1) A member of a federally recognized Indian tribe, or
2) The biological child of a member of a tribe **AND** eligible for membership in a tribe.

There is an ongoing obligation throughout the case to identify an Indian child. Court must instruct parties to inform court if they receive information indicating that there is reason to know the child is Indian child.

❒ Did the court make an inquiry of all case participants, on the record, as to whether the case involves an Indian child? *If there is "reason to know" that the child is an Indian child, proceed as a WICWA case.*

❒ Have both parents and any Indian custodian been identified? Has paternity been acknowledged or established? What has been done to locate an absent or missing parent?

❒ Is the child a member of a tribe? If not, is either parent a member of or eligible for membership in a tribe? Is the child eligible for membership in a tribe? *Each tribe determines membership.*

❒ If the parents are unable to provide information on tribal affiliation, have family members been consulted?

❒ Has a Request for Confirmation of Child's Indian Status form been sent to applicable tribe(s)? Has documentation of eligibility for membership been received back from the tribe(s)?

NOTICE FOR OUT-OF-HOME PLACEMENT AND INVOLUNTARY TPR

First Hearing in the Case (excluding Temporary Physical Custody Hearings)

❒ Has notice of the proceeding been sent to the tribe, parents, and Indian custodian (if any) by registered mail with return receipt requested?

  ❒ Have at least 10 days elapsed since **receipt** of the notices? *If no, adjourn hearing.*

  ❒ Have return receipts been received and filed with the court?

❒ If parent or tribe is unknown, was notice sent to Bureau of Indian Affairs at least 15 days before hearing?

❒ Has a parent, tribe, or Indian custodian requested adjournment to prepare? *If yes, adjourn up to 20 days.*

❒ If the parents/Indian custodian do not have counsel, do they want to be represented? Have they contacted the Public Defender's Office? *Right to appointed counsel if indigent.*

❒ Have parents been notified of their right to intervene and to request/object to transfer to tribal court?

❒ Have parents been notified of potential consequences of case on parental and custodial rights (*form IW-1716)*?

Subsequent Hearings

❒ Has tribal contact information (names, addresses, and phone numbers) been documented in the court record for notification of future court proceedings?

❒ Has written notice to tribe, parents, and Indian custodian been provided by mail, personal delivery, or fax?

❒ Has the tribe received copies of all reports and other documents submitted to the court?

INTERVENTION AND TRANSFER OF JURISDICTION

❒ Has the tribe or Indian custodian made a motion to intervene? *Right to intervene at any stage.*

❒ Is there a request by the tribe, Indian custodian, or parent to transfer the case to tribal court?

❒ If transfer requested, the case **shall be** transferred to tribal court **unless one of the following applies**:

  ❒ Does one of the parents object to the transfer?

  ❒ Has the tribal court declined jurisdiction or does the tribe lack a tribal court?

  ❒ Is there good cause under Wis. Stat. §§ 48.028(3)(c)3. or 938.028(3)(c)3. to deny the transfer?

PLACEMENT PREFERENCES

The child must be placed according to placement preferences in Wis. Stat. §§ 48.028(7) or 938.028(6) in any out-of-home, pre-adoptive, or adoptive placement, unless good cause is shown, per Wis. Stat. §§ 48.028(7)(e) or 938.028(6)(d).

❒ Has the tribe established its own order of placement preferences? *If yes, that order applies.*

❒ Is the current or proposed placement in compliance with the applicable placement preferences?

❒ What efforts have been made to place the child in the order of preference?

❒ Have both parents been asked for names of extended family members?

❒ Was the tribe contacted for a placement approved, licensed, or operated by the tribe?

❒ If placement preferences not followed, is there good cause to depart from order of preference? *Reasons for asserting good cause must be made on the record or provided to court and parties in writing.*

Additional Considerations for Out-of-Home and Pre-adoptive Placements:

❒ Is the child's placement the least restrictive, family-like setting that meets the child's special needs, if any?

❒ Is the child placed in reasonable proximity to the child's home, taking into account any special needs?

FINDINGS FOR OUT-OF-HOME PLACEMENT AND INVOLUNTARY TPR

Emergency Removal

❒ Is emergency removal necessary to prevent imminent physical damage or harm to the child?

Active Efforts to Prevent Breakup of Indian Family*

❒ Have all of the required activities under Wis. Stat. §§ 48.028(4)(g) or 938.028(4)(f) for *active* efforts been conducted?

- ❒ Were appropriate tribal representatives requested to evaluate the family and assist in developing a case plan that uses resources of the tribe and Indian community?
- ❒ Has a comprehensive assessment of the family been completed?
- ❒ Have tribal representatives been identified, notified, and invited to participate in the proceeding?
- ❒ Have extended family members been consulted for support, cultural connections, and placement?
- ❒ Were arrangements made to provide family interaction in the most natural and unsupervised setting?
- ❒ Were all available family preservation strategies offered or employed, while also involving the tribe?
- ❒ Were community resources offered and the family actively assisted in accessing those resources?
- ❒ Was monitoring of client progress and participation in services provided?
- ❒ If services were unavailable, were alternative ways of addressing the family's needs considered?

❒ If any activity was not conducted, has documentation been provided to the court with an explanation?

❒ Why have the activities and efforts been unsuccessful in reunifying the Indian family?

**Under WICWA, the active efforts finding is also required at Extension and Permanency Hearings.*

Serious Emotional or Physical Damage

❒ Has the petitioner provided the requisite qualified expert witness (QEW) testimony?

❒ Was the QEW chosen in the order of preference under Wis. Stat. §§ 48.028(4)(f) or 938.028(4)(e)? If not, what efforts were made to secure a QEW from a higher order of preference?

❒ Is the QEW knowledgeable in the tribe's customs and child-rearing practices? In what capacity?

❒ Are any of the reasons for the child's removal related to cultural child-rearing practices?

❒ Does a causal relationship exist between the conditions in the home and the likelihood that continued custody of the child by the parent or Indian custodian likely to result in serious emotional or physical damage to the child, based on the QEW testimony? *Burden of proof of clear and convincing evidence for out-of-home placement and beyond a reasonable doubt for involuntary TPR.*

VOLUNTARY TPR, VOLUNTARY PLACEMENT AGREEMENT, OR DELEGATION OF POWERS

❒ Has the Indian parent or Indian custodian consented in writing?

❒ Were the terms and consequences of the consent, including limitation on withdrawing consent, fully explained and understood?

❒ Was the consent recorded before a judge and accompanied by the judge's certificate?

❒ Is the child at least 11 days old at the time of the consent?

❒ Have placement preferences been followed or is there good cause to depart from the order of preference?

This checklist is also available online at https://www.wicourts.gov/courts/programs/docs/ccipwicwa.pdf.

Wisconsin Children's Court Improvement Program March 2021

APPENDIX 11
DNA VIOLENT CRIMES
Under § 165.84(7)(ab)1.

§ 940.01	First-degree intentional homicide
§ 940.05	Second-degree intentional homicide
§ 940.198(2)	Physical abuse of an elder person (intentional)
§ 940.21	Mayhem
§ 940.225(1)	First-degree sexual assault
§ 940.225(2)	Second-degree sexual assault
§ 940.225(3)	Third-degree sexual assault
§ 940.235	Strangulation & suffocation

§ 940.30	False imprisonment
§ 940.302(2)	Human trafficking
§ 940.305	Taking hostages
§ 940.31	Kidnapping
§ 940.32(2), (2e), (2m)	Stalking
§ 940.43	Intimidation of a witness
§ 940.45	Intimidation of a victim
§ 941.20	Endangering safety by use of dangerous weapon
§ 941.21	Disarming a peace officer
§ 941.327	Tampering with household products
§ 943.02	Arson
§ 943.06	Molotov cocktails
§ 943.10	Burglary
§ 943.23(2)	Operating vehicle without owner's consent
§ 943.231(1)	Carjacking
§ 943.32	Robbery
§ 948.02(1), (2)	First- or second-degree sexual assault of a child
§ 948.025	Repeated sexual assault of a child
§ 948.03(2)(a), (c)(5)(a)1., 2., 3., 4.	Physical abuse of a child
§ 948.05	Sexual exploitation of a child
§ 948.051	Trafficking of a child
§ 948.055	Causing a child to view or listen to sexual activity
§ 948.07	Child enticement
§ 948.08	Soliciting a child for prostitution
§ 948.085	Sexual assault of child by substitute care provider
§ 948.095	Sexual assault of child by school staff or person who works or volunteers with children
§ 948.30(2)	Abduction of another's child by force

APPENDIX 12

SURROGACY/PARENTAGE/ ASSISTED REPRODUCTION TECHNOLOGY

Wisconsin has very little statutory or case law touching on the issues of Surrogacy/Parentage and Assisted Reproduction Technology. As a result, courts are advised to read carefully the limited references to these processes that do exist in the statutes and case law before rendering decisions on these issues.

Definitions

Surrogacy—"the process by which a woman makes a choice to become pregnant and then carry to full term and deliver a baby who, she intends, will be raised by someone else." ***Rosecky v. Schissel (In re Paternity of F.T.R.)***, 2013 WI 66, ¶ 34, 349 Wis. 2d 84.

Traditional Surrogacy—the process whereby "the surrogate is the genetic mother of the child and is artificially inseminated with the sperm of the intended father or a sperm donor." ***Rosecky v. Schissel (In re Paternity of F.T.R.)***, 2013 WI 66, ¶ 35, 349 Wis. 2d 84.

Gestational Surrogacy—the process by which "sperm is taken from the father (or from a donor) and an egg is taken from the mother (or from a donor), fertilization happens outside the womb (called *in vitro* fertilization), and the fertilized embryos are then implanted into the surrogate mother's uterus." The mother is not genetically related to the child. ***Rosecky v. Schissel (In re Paternity of F.T.R.)***, 2013 WI 66, ¶ 35, 349 Wis. 2d 84.

Intended Parent—"an individual, married or unmarried, who manifests the intent … to be legally bound as the parent of a child resulting from assisted or collaborative reproduction." ***Rosecky v. Schissel (In re Paternity of F.T.R.)***, 2013 WI 66 ¶ 34, 349 Wis. 2d 84.

Wisconsin Statutory Provisions

Chapter 891. Presumptions

§ 891.40. Artificial Insemination

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband of the mother at the time of the conception of the child shall be the natural father of a child conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and shall file the husband's consent with the department of health services, where it shall be kept confidential and in a sealed file except as provided in s. 46.03 (7) (bm). However, the physician's failure to file the consent form does not affect the legal status of father and child. All papers and records pertaining

to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, may be inspected only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is not the natural father of a child conceived, bears no liability for the support of the child and has no parental rights with regard to the child.

Chapter 767, Actions Affecting the Family

§ 767.87 Testimony and Evidence Relating to Paternity

…

§ 767.87(9) ARTIFICIAL INSEMINATION; NATURAL FATHER. Where a child is conceived by artificial insemination, the husband of the mother of the child at the time of the conception of the child is the natural father of the child, as provided in s. 891.40.

…

Chapter 69, Collection of Statistics

§ 69.14 Registration of Births

(1) FILING REQUIREMENTS.

…

(g) *Birth by artificial insemination.* If the registrant of a birth record under this section is born as a result of artificial insemination under the requirements of s. 891.40, the husband of the woman shall be considered the father of the registrant on the birth record. If the registrant is born as a result of artificial insemination which does not satisfy the requirements of s. 891.40, the information about the father of the registrant shall be omitted from the registrant's birth record.

(h) *Surrogate mother.* If the registrant of a birth record under this section is born to a surrogate mother, information about the surrogate mother shall be entered on the birth record and the information about the father shall be omitted from the birth record. If a court determines parental rights over the registrant, the clerk of court shall report the court's determination to the state registrar on a form prescribed by the state registrar, along with the fee required under s. 69.22. Upon receipt of the report, the state registrar shall prepare and register a new birth record for the registrant….

Wisconsin Case Law

L.M.S. v. S.L.S., 105 Wis. 2d 118 (Ct. App. 1981).

A sterile man entered into an agreement with his wife that she would become pregnant by another man. The wife had sexual intercourse with the other man and became pregnant. The other man complied with the agreement and never established a relationship with the child. His parental rights were terminated. The married couple eventually filed for divorce and wife sought child support from husband, which he opposed. The court of appeals held "that a husband who, because of his sterile condition, consents to his wife's impregnation, with the understanding that a child will be created whom they will treat as their own, has the legal duties and responsibilities of fatherhood,

including support. A husband who participates in the arrangement for the creation of a child cannot consider this a temporary relation to be assumed and disclaimed at will."

Rosecky v. Schissel (In re Paternity of F.T.R.), 2013 WI 66, 349 Wis. 2d 84.

Two couples, the Roseckys and the Schissels, entered into a written parentage agreement (PA) wherein Monica Schissel was artificially inseminated with David Rosecky's sperm. The agreement contemplated that upon the birth of the child Monica would terminate her parental rights and the child would be raised by the Roseckys. The parties had a falling out and, upon birth of the child, Monica no longer agreed to terminate her parental rights. The Roseckys sought enforcement of the agreement requiring Monica to terminate her parental rights and providing for the Roseckys to raise the child as their own. Monica opposed the request to enforce.

The Wisconsin Supreme Court held:

"The Wisconsin Statutes do not provide a specific answer as to whether the PA (parentage agreement) is enforceable, and they do not contain a statement of public policy against enforcement."

"Aside from the termination of parental rights provisions in the PA at issue, we conclude a PA is a valid, enforceable contract unless enforcement is contrary to the best interests of the child."

"We also conclude that the circuit court erroneously exercised its discretion by excluding the PA and rendering its custody and placement decision without consideration of the PA. We reverse the circuit court's determination that the PA is enforceable and remand for a hearing on custody and placement, wherein the terms of the PA are enforced unless enforcement is contrary to the best interests of [the child]."

S.R. v. Circuit Court (In the Int. of P.L.L.-R.), 2015 WI App 98, 366 Wis. 2d 134.

On September 4, 2013, S.R. was artificially inseminated using sperm from an anonymous donor. On June 7, 2014, P.L.L.-R. was born. S.R. and C.L., both of whom are women, were married on June 13, 2014, in Wisconsin. In November 2014, S.R. and C.L. filed a petition with the circuit court entitled "Joint Petition for Determination of Parentage." The petition contained two arguments supporting the position that the circuit court should find S.R. and C.L. as the natural parents of P.L.L.-R. First, that a gender-neutral reading of Wisconsin's marital-presumption and artificial-insemination laws would result in the court being required to enter such a parentage order. Second, that the trial court should apply the doctrine of "intended parentage," which would also require the court to enter a parentage order. The trial court opined that the petition, as filed, was seeking a declaratory judgment that Wisconsin's marital-presumption and artificial-insemination laws are unconstitutional as written. Therefore, the attorney general of the state of Wisconsin should have been properly notified, but had not been so notified. The court then dismissed the matter on those procedural grounds.

R.B.O. v. Knutson (In re Paternity of J.W.O.T.), No. 2016AP952, 2017 WL 2199186 (Wis. Ct. App. May 18, 2017) (unpublished opinion not citable for persuasive value per section 809.23(3)(b)).

A same-sex married couple living in Virginia and an opposite-sex married couple living in Wisconsin entered into a surrogacy contract in which the Wisconsin wife was to be the gestational surrogate for a child and the Virginia couple were the intended parents. A petition for parentage was filed. During the pendency of this case, three different judges rotated into supervision of this file. The second of those judges appointed a guardian ad litem for the child. The guardian ad litem recommended that the matter be conducted as an adoption. On March 25, 2016, when the child was

approximately seven months old, the second judge entered an order denying the joint petition, ordering a termination of parental rights of the surrogate mother and her husband and left in place a temporary order awarding custody and placement to the intended parents. The guardian ad litem submitted invoices for services exceeding $100,000 and said invoices were approved by the second judge. The second judge stated, "the costs here are not … even anywhere near a number I would think was unreasonable in total, compared to … what's at stake, which is the life of a child." A third judge then rotated into the case and granted a motion to reconsider the parentage petition and subsequently granted the petition for parentage. That third judge also found that he had no authority to vacate the approval of guardian ad litem fees. On appeal, the court of appeals reversed the order on guardian ad litem fees and advised that the trial court does have authority reconsider those fees.

Torres v. Seemeyer, 207 F. Supp. 3d 905 (W.D. Wis. 2016).

Chelsea Torres and Jessamy Torres are a same-sex couple married in New York in 2012. They are residents of Madison, Wisconsin. In 2014, Chelsea was artificially inseminated using an anonymous sperm donor. In 2015, after same-sex marriage became legal in Wisconsin, Chelsea gave birth to A.T. Although Jessamy and Chelsea requested a birth certificate listing both of them as parents, the Wisconsin Department of Health Services issued the certificate with Chelsea named as the sole parent. Plaintiffs filed suit alleging that the department's refusal to issue a two-parent birth certificate violates both the Equal Protection Clause and the Due Process Clause of the 14th Amendment. The court found that the Department of Health Services' practice before May 2, 2016, of enforcing Wis. Stat. § 891.40(1) against female married couples but not different-sex couples was unconstitutional. The department is to construe Wis. Stat. § 891.40(1) in gender-neutral terms. In particular, the word "husband" in sub. (1) should be construed to mean "spouse."

APPENDIX 13

USE OF RESTRAINTS (SHACKLING) UNDER §§ 48.299(2m) AND 938.299(2m)

Restraints may not be used on a child/Juv in a Ct proceeding and shall be removed before appearance unless the Ct finds all the following:

1. Restraints are necessary because of any of the following reasons:

    a. Restraints are necessary to prevent physical harm to the child/Juv or another person, OR

    b. Child/Juv has a history of disruptive courtroom behavior that has placed others in potentially harmful situations, or the child/Juv presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior, OR

    c. There is a founded belief that the child/Juv presents a substantial risk of flight from the courtroom,

AND

2. There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child/Juv or another person, including the presence of Ct personnel, law enforcement officers, or bailiffs.

The Ct shall provide child's/Juv's counsel a right to be heard before the Ct orders use of restraints. If counsel informs Ct that child/Juv wishes to be present, the Ct may order telephone or videoconference hearing pursuant to § 48.299(5) or § 938.299(5).

If Ct orders restraints, the Ct shall make findings in support of the order.

Any restraints shall allow child/Juv limited movement of hands to read and handle documents and writings necessary to the hearing. Under no circumstances may restraints be fixed to wall, floor, or furniture.

Note: "Restraints" mean "leather, canvas, rubber, Velcro, or plastic restraints; handcuffs, waist belts, or leg chains; a wheel chair; an electric immobilization device; or any other device used to securely limit the movement of a" child's/Juv's body.